S. HRG. 98-505

# NOMINATIONS—DEPARTMENT OF TRANSPORTATION AND CIVIL AERONAUTICS BOARD

## HEARINGS

BEFORE THE

## COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON THE

NOMINATIONS OF

SEPTEMBER 16, 1983

MATTHEW V. SCOCOZZA, TO BE ASSISTANT SECRETARY OF TRANSPORTATION FOR POLICY AND INTERNATIONAL AFFAIRS

SEPTEMBER 19, 1983

BARBARA E. McCONNELL, TO BE A MEMBER OF THE CIVIL AERONAUTICS BOARD

OCTOBER 26, 1983

DIANE K. STEED, TO BE ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

NOVEMBER 3, 1983

JOHN RILEY, TO BE ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION

NOVEMBER 7, 1983

JAMES H. BURNLEY IV, TO BE DEPUTY SECRETARY OF TRANSPORTATION

NOVEMBER 10, 1983

MARI MASENG, TO BE ASSISTANT SECRETARY OF TRANSPORTATION FOR PUBLIC AFFAIRS, AND JAMES L. EMERY, TO BE ADMINISTRATOR, ST. LAWRENCE SEAWAY DEVELOPMENT CORPORATION

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# NOMINATION—DEPARTMENT OF TRANSPORTATION

FRIDAY, SEPTEMBER 16, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
*Washington, D.C.*

The committee met, pursuant to notice, at 9:40 a.m., in room 253, Russell Senate Office Building, Hon. John Danforth presiding.

Staff members assigned to these hearings: Marguerite Ayers, professional staff member; and Marty Kress, minority professional staff member, Steve Palmer, Loretta Dunn, Linda Morgan, and James Drewry, minority staff counsels.

Senator DANFORTH. This hearing relates to the nomination of Matthew V. Scocozza for Assistant Secretary of Transportation for Policy and International Affairs. Matt Scocozza is a former member of the staff of this committee and is well known by most, if not all of the members of the committee. He is certainly welcomed back here in his old haunt.

Matt, do you have any comments that you would like to make?

## STATEMENT OF MATTHEW V. SCOCOZZA

Mr. SCOCOZZA. Thank you, Mr. Chairman. It is an honor for me to be here today as President Reagan's nominee for Assistant Secretary for Policy and International Affairs at the Department of Transportation. But, it is also a great honor for me to be here before this committee. It is like coming home and I feel very comfortable in this room.

I don't have a prepared statement but I would like to take this opportunity to thank, in generic terms, all of the good people who have helped me all along, starting off with, I think, one of the finest jurists in the country, Clifford Sanders, a judge on the Tennessee Court of Appeals, and an unnamed person at the Civil Aeronautics Board who interviewed me, right after law school, and told me that I didn't graduate at the top of my law school class and the University of Tennessee was not one of the big name law schools, so I should be content to go back to Tennessee and be a country lawyer. I think that person helped me almost more than anyone else.

Congressman Silvio Conte and Senator Jim Pearson, Senator Packwood, you and every one of the Senate Commerce Committee members have been a tremendous help to me in my career growth, in giving me good counsel and guidance, and I hope I can continue to work with you all in that fashion in the future.

I have nothing else for the record, Mr. Chairman.

Senator DANFORTH. Thank you very much.

It is my understanding that the position of Assistant Secretary for Policy and International Affairs is in the nature of a clearinghouse office within the Department of Transportation for all matters relating to policy before the Department, that all policy issues and questions are reviewed by the Assistant Secretary.

We had an interesting hearing in this room 2 or 3 days ago relating to the performance of the National Highway Traffic Safety Administration, and it is my view of the performance of the Department of Transportation over the last 2½ years has been that it has been pretty weak in matters of highway safety, but that the Secretary has made a strong statement of her own views relating to this very important issue and that she is personally committed but she is having difficulty selling her position to the White House.

Now I think that is correct. Do you have a personal view as to what the Department of Transportation could and should be doing about highway safety and about what your role would be in working with the Secretary and perhaps with the Office of Management and Budget in working out the administration's policy on highway safety?

Mr. SCOCOZZA. There is no question, Mr. Chairman, that safety is the No. 1 priority for this Secretary of Transportation, and words without any deeds are kind of empty. When I first went to the administration I was floored that it sometimes takes 10 weeks to get a simple letter back to the Senate on a question or a position on a piece of legislation, and I am speaking about my experience at the Department of State.

The bureaucracy is incredible, to get it to move. At the Senate Commerce Committee it wasn't difficult to put a recommendation to a Senator and have it seriously considered for legislation within a matter of weeks. But in the bureaucracy it is so much different, with the clearinghouse, with all the other agencies. So the process is very, very slow.

Yes; there is probably less than satisfactory progress in the last 2½ years, but this Secretary has only been at DOT 6 months. I have only been there 2 months and, officially, only 2 weeks. Her charge to me and charge to an agencywide task force on safety, which I will chair, is really to do everything that the agency can conceivably do under its own authority in safety.

Maybe the kudos might not come for those things, but we are at least going full steam ahead on those things that are responsible and should be done.

With respect to what is happening in the executive branch, at OMB, in the White House, I can promise you that all of us have safety as a priority issue. We are constantly in contact with OMB, helping them understand the legislative proposals that are pending here in the Senate, and those of the Secretary. We are in touch with the industry. We are in touch with the Teamsters.

We are not at a point where a big announcement could be made or substantial progress can happen today or tonight, but I assure you that I am satisfied that everything that can conceivably be done is being done. And, in my contacts with the committee staff, I have looked for guidance and help in terms of suggestions or ac-

commodations they thought we could perhaps do to help the Secretary in her role as an effective safety leader.

Perhaps the machinery is late starting, but it is finally moving. It is a very difficult and very frustrating process, much worse than any experience I have ever seen in my whole career. The bureaucracy is bigger than all of us, unfortunately, but what we can do, we are doing.

Senator DANFORTH. Well, thank you very much. I understand the problems of the bureaucracy. My concern has been that OMB has become the ideological watchdog of the administration, that it doesn't particularly want to be bothered by arguments on the merits, and that it has just made up its mind, particularly on passive restraints, and further, that the tactic of delay itself has become the method of the administration to thwart the implementation of safety measures. There has been some speculation in the press to that effect.

My hope would be that the Department of Transportation would either be forthright in stating the administration's position on the merits or in the alternative, would get on with it. I think that if delay itself is a tactic in the safety area, that is the most——

Mr. SCOCOZZA. Least desirable.

Senator DANFORTH. Well, it is the least desirable and it is also sort of a sleazy way to approach the affairs of Government, in my opinion. I would hope that we could at least make decisions in the Department of Transportation in a timely fashion and then state what those decisions are, rather than just staying court orders forever and delaying matters in time-consuming appeals just for the sake of delay.

Do you have any feeling on that?

Mr. SCOCOZZA. I agree with you, Senator. Senator Long taught me a lesson once. He didn't care as much if an answer was yes or no. He just wanted to know what the answer was so he could decide how to deal with it, whether to amend it or overrule it or to congratulate you for it.

I appreciate your point that we do have to clear the air and we have to state our positions. And Congress and the administration just have to try to deal with that. The uncertainty is very troublesome to all of us. I think one of the aspects is that Secretary Dole is not one to take no for an answer. Her objective in the safety area is to try and get as much as she possibly can. When you consider safety as a priority, the routine safety items that have to be done on a regular basis are not enough.

The Department of Transportation was developed in large part as a safety agency. The safety function was taken away from the ICC, away from the CAB, away from the Department of Commerce back in 1967 when the Department was created. And, I think, clearly, this is the first time that safety has been given its rightful place at the Department of Transportation.

It is funny watching the grey matter working on safety really for the first time, to have a Secretary who has given her personal attention to it. The safety people are wiping the cobwebs off and starting to work. Many are new initiatives and many are initiatives that haven't been tried in years. There is a lot of good produc-

tive thinktank work going on, but that is still not good enough. It has to be turned into substantial progress.

I agree with you, Senator. I am committed to trying to get answers and very soon, sooner rather than later.

Senator DANFORTH. We have had a series of hearings in this subcommittee generally on the question of the health of the surface transportation industry and its various components, how they are adapting to deregulation, what the effect of the recession has been on them, what the effect has been of the oversupply of boxcars in the railroad industry, the oversupply of barges in the barge industry, and we have been struggling to at least come up with some ideas of what we could do to improve the health of those industries.

Is the Department concerned about the health of surface transportation, and do you see any possibility of perhaps coming up with some creative thinking to make those industries more healthy?

Mr. SCOCOZZA. Mr. Chairman, if my answer were no, that we didn't care about the health of the surface transportation industry, you should throw me right out of the window now and get it over with. The answer is clear. We are committed to the health of the surface transportation industry.

We passed legislation in 1980 for the railroad industry and the trucking industry based on the best evidence and guidance we had at that time from both the Congress and administration staff.

Now we have to go back and look and make sure that what we did is working. If it is not working, we have to determine how we can fix it and, in fact, make it work.

I remember, for instance, that contract rates and railroad deregulation were a very serious area of concern for the shippers of bulk commodities. Well, the question that we have now is how can we make it even better? How can we go back, revisit it, and clean up the loopholes? I am surprised that a lot of the dangers that we were warned about have not occurred, but there still are problems. There still is regulation that is hurting the shippers, that is hurting the industry. Even if it is in the nature of paperwork for carriers, we must have a consistent and a dedicated attitude toward getting the Government out of regulating when there is no plausible reason for regulating.

But once again, we have a responsibility to shippers who depend on essential services. The captive shipper is one thing that this committee helped the rest of the Congress realize did, in fact, exist. The captive shipper was not just some pie in the sky person who didn't need protection from a monopoly situation. But we have to revisit that to make sure that those protections were responsible and are working today.

And I think we have to dedicate ourselves to watching everything very closely. I don't think we can pass a deregulation bill and expect it to work for 30 years. I think we have to go back and revisit it. That was one of the reasons, in both deregulation bills, that there was a requirement to have oversight hearings every year.

Senator DANFORTH. Sometimes philosophical concepts can be very sound and yet in application, if applied without regard to factual situations, they can have consequences which were not anticipated or which are worse than what was anticipated.

It would be my hope that we can take a continuing practical look at the health of surface transportation. If there are problems with those industries, we could perhaps come up with some ideas for making these better.

Do you anticipate being open in your office to the concerns, to the desire for communication of various components of the transportation industry, including not only the management of various companies but also the unions?

I can recall a conversation with one union leader a couple of years ago or so, and this individual said that there was no contact whatever between his union and DOT. I would hope that we can encourage anyone who is interested to come to you or whomever in the Department of Transportation and state concerns about the health of their livelihood.

Mr. SCOCOZZA. I think that is most important, Mr. Chairman, and not only for them to come to us, but if I have the opportunity, I will go to them.

I went to Miami just last week. The Department of Transportation sponsored a labor-management seminar on better communications among the industry, labor, and the Government in the area of mass transit. That week, I made a presentation in which I heralded the labor union leaders, at least in the railroad industry, that I am acquainted with. They include a man who is no longer with us, Mr. Fred Kroll, who passed away a couple of years ago; Fred Hardin and other giants, and Jimmy Snyder, who I think deserve a tremendous amount of credit for saving Conrail and avoiding a lot of the problems that other railroads are suffering from today. It is time that we even work harder to close the barriers to communications.

I think that also applies to working with the Senate Commerce Committee and the House Energy and Commerce Committee on the other side. I resented it as a staff member, when a bill was flopped on my desk and I was told, here is a 500-page piece of legislation that the administration would like to have filed immediately.

Well, surprises aren't good, and there are a lot of times when the committees in the House and the Senate have better insights than perhaps the staff at the Department of Transportation or at OMB. I think if we work in close consultation before legislation is actually developed and submitted to Congress, the end product is always better.

I would like to see the lines of communication become much closer between the Department of Transportation and the committee. I don't mean that Secretary Dole and the Senators have to be meeting on a daily or a weekly basis. That would be the best situation if it were possible, but it is not. I think that our staffs should be working together more than they are. They should be meeting on a regular basis to discuss issues, particularly where there are differences.

But unfortunately, Mr. Chairman, we are late in reaching this conclusion. These ideas sound good, and I wish this coordination had been going on for the last 2 years. But, it is better late than never. Perhaps we can close the gap. We have 1 year before the election. Perhaps we will be able to put some constructive joint

effort legislation together within the next couple of months. I know we have to do that on CAB sunset and a couple of other vital pieces of legislation. There are other things that can be done productively, and I would like to start working together immediately.

Senator DANFORTH. One of the issues that is going to be on the floor of the Senate between now and the end of the year is the coal slurry pipeline bill. The administration had previously taken a position against granting Federal eminent domain powers for coal slurry pipelines. There has been a little bit of backing and filling by the Secretary of the Interior on that issue recently.

Is this a matter that would be before your office and before the Secretary of Transportation, or is this viewed as something that is within the province of the Secretary of the Interior?

Mr. SCOCOZZA. Mr. Chairman, coal slurry pipelines, it cannot be denied, have an impact on our transportation system. And if I could speak—the judge that I used to work for used to say, "Could we just go out of court for a minute?" And speaking out of court, I would basically say that I think a coal slurry pipeline is obviously a productive way to move a commodity. Whether or not you want to move it right next door to a railroad raises a question. It is not basically which mode could do better. It is that there is a mode that is operating a particular service. Is it necessary to have two—that is, should we have Amtrak right next door to Metro going between Baltimore and Washington? Metro may do it faster and cheaper, but Amtrak is there already.

Whereas, when we look at a situation out in the West, there is a coal slurry pipeline where no railroads exist. I think it makes sense, and I perhaps believe that might be the gist of the reason for across-the-board grants of eminent domain.

I don't know what position the Department of Transportation will take but it is my personal opinion that there should be a place for coal slurry pipelines in our national transportation network. Where a particular pipeline is proposed, I think should be looked at very hard and seriously because we don't want to put a railroad out of business if 90 percent of its business is coal hauling.

You don't particularly need to have the consumers supporting a $5-billion pipeline right next to a railroad that perhaps the grain shippers rely on. If that particular railroad loses its coal traffic, the grain shippers' cost will triple and quadruple.

So there will be imbalances to a transportation system. They are different modes. And I think the question of where the modes are and what areas of the country they are serving is an important policy question that has to be decided.

Senator DANFORTH. Well, I am not quite sure what your answer is. I think that you are considerably more enthusiastic about coal slurry pipelines than I would be.

Mr. SCOCOZZA. But then again, there are problems with the coal slurry pipeline.

Senator DANFORTH. How long were you working on this committee?

Mr. SCOCOZZA. The Department of Transportation should be involved in determining the position on coal slurry pipelines because they are an important element of a transportation system.

Senator DANFORTH. I will just express my own view that I would hope that it would be both active and negative.

Mr. SCOCOZZA. OK, that has registered.

Senator DANFORTH. Maybe Senator Kassebaum should ask this question because I don't pretend any expertise in it whatever, but it is something that the staff wanted asked. It has to do with the House subcommittee report on improvement needed in the implementation of U.S. international aviation policy. The question has to do with your thoughts relating to trading soft for hard rights, and even more particularly how you view the hard versus soft rights question in the context of current negotiations between the United States and both Israel and Italy.

If you know what that means, you might first rephrase the question and then attempt to answer it.

Mr. SCOCOZZA. Mr. Chairman, I believe that when we deregulated airlines in the United States there was an effort to try to apply that deregulation concept in international negotiations. That is a good concept, but I think we have to respect the fact that there are 85 sovereign nations that we deal with. They have a 50-percent say at a negotiating table, and I say this as a former chief aviation negotiator for the United States.

We were pushing deregulation to a point that we were deregulating our half, but on the other side we were not being very careful about what we were getting in return. Perhaps, sometimes, we were getting the ability to advertise in newspapers and we were trading that opportunity for flying into Los Angeles. I think that is a hard right for a soft right. I am violently opposed to that.

As the chief negotiator for the United States, at least since January of 1982 it has not been our policy to trade a hard right for a soft right.

I appreciate the opportunity to respond to this because there was a report by Congressman Levitas condemning, rightly so, our previous attitude at the negotiating table. My only concern was that Congressman Levitas's investigation was concluded in mid-1982 when I had just started at the Department of State. Dan McKinnon had just become the chairman of the Civil Aeronautics Board. Judith Connor and Darrell Trent had started to take an active role at the Department of Transportation. So this administration's players were just getting the policy changed.

Since January of 1982, I promise you that trading hard rights for soft rights is something that is not even considered.

I am going to Italy tomorrow night to chair a negotiation, and I would prefer not to get into the particulars of that negotiation but I promise you that one of our attitudes, No. 1, is to insure that Italy gives us a fair shake. I had refused to even have discussions with the Government of Italy until they cleaned up a discriminatory situation against TWA and Pan Am at Fiumicino Airport.

It was one of the most outrageous and ridiculous situations I have ever seen. If you want to fly on Alitalia you go to a big, beautiful carousel where they take care of your ticket; they take care of your bags and move you right on through the system.

If you are flying TWA or Pan Am, you have to go to a little tiny ticket booth. If you want to transfer from TWA, for example, to Air France, you have to go to the Air France booth. Someone in the

Air France booth stamps your ticket and then you have to go back to the TWA booth. You pay your money at the TWA booth and then go back to the Air France booth, get a voucher, return to the TWA booth, where they release you and give you a baggage card and then send you to the other side of the airport to check your bag.

Now perhaps, being younger than some of the travelers in the Fiumicino Airport and being able to speak Italian, I didn't have as hard a time, but I saw U.S. passengers totally frustrated and distraught and literally on the verge of tears because they didn't know what was going on.

That is a discriminatory practice against U.S. carriers in favor of a national carrier that cannot and should not be tolerated. Fortunately, we have got that issue resolved, but it took 9 years, and I think it took 9 years simply because we filed complaints before the Civil Aeronautics Board to file sanctions against the Government of Italy.

I think that we shouldn't talk with anybody until we are operating under the same rules. But there are some other bilaterals that were negotiated in prior years that I have serious problems with, Mr. Chairman. They gave open skies to a country that, perhaps, only had 2 million passengers to offer us and we, in turn, gave open skies to a country that has access to our 252 million traveling Americans.

I am not going back on deregulation. I am basically saying I want to open our doors, but I want to see a balance of benefits. I don't think that is a dirty word in international negotiations anymore. We should be getting in kind what we are giving out.

So the short answer is that trading hard rights for soft rights isn't even an issue we would consider. We want to see an absolute balance of benefits. But, one unfortunate thing is that we have a tremendous number of imbalanced agreements on our books today and there is a question of the integrity of the United States of America in following through on agreements that we have signed. And too much attention is being given to those agreements, especially in light of all the good things that have happened in the last 2 years in terms of having balanced agreements. It is a very serious issue with our international carriers.

Senator DANFORTH. Very realistic approach.

Senator Kassebaum.

Senator KASSEBAUM. Thank you, Mr. Chairman.

I would just like to say that your very thoughtful answers, Mr. Scocozza, whether one would agree with them or not, indicate that you have a great deal of knowledge in the area of transportation. And I think it is a real plus to all of us to have you going to this new position.

A lot of the things that I would ask have been touched on in one fashion or another. I would, like to ask when we will see a recommendation from DOT on the sunsetting of CAB.

Mr. SCOCOZZA. Senator, I would like to give you one this afternoon if I could.

Senator KASSEBAUM. I wish you could.

Mr. SCOCOZZA. But as I mentioned earlier, we would like to work closely with your staff and the staff of the Senate Commerce Com-

mittee, as well as the House, to make sure that we are on the right track.

We still have to submit our recommendations to OMB, but before we do that, I would like to have the advice, guidance, and good counsel of you and the rest of the members of the committee and your staff.

I think the process, at a minimum, is going to have to take 90 days. So by the first of the year, I hope legislation will be in its final form. But it would not be a surprise to this committee because we hope to have you in the loop.

Senator KASSEBAUM. Well, I think that would be beneficial, but time is of essence. We have been working on this on and off for some period of time. So I am pleased to hear that response.

Speaking of OMB, we always seem to have a little difficulty in working with OMB. A recent example, I think, was in the appropriation of moneys for the various functions of the aviation trust fund. I think that there is a growing concern around the country, in the aviation public, about the intent in the development of the airways systems plan.

And while this doesn't fall really under your bailiwick, I would say that I believe it is crucial that we have a better and broader understanding in the public of exactly the intent of the plan, the progress of that plan, and the funding for that plan, or we are going to be in serious trouble with changes that have been projected and ones that I think certainly need to be made.

So as we can work in coordination and have support from us in our efforts to make the full use of the authorization levels, this would be exceptionally helpful in any controversy that we might have, or disagreement, with OMB.

Senator Danforth has held oversight hearings on the Staggers Act in revisiting the deregulation of the railroad industry, and you touched on contract rates. I held a very interesting hearing in August on grain transportation really primarily regarding contract rates and whether public disclosure in a fuller context would be beneficial to the smaller grain elevator operators, in being able to be competitive with the major terminal operators.

Do you see any problem with full public disclosure of contracts?

Mr. SCOCOZZA. Because I have been flying around the world doing international aviation negotiations for 2 years, I have not been close to the contract rate situation. But from an historical perspective, Senator, we thought when we were recommending the legislative proposals to the committee that disclosure of the essential elements of the contract meant just that, that the small shippers would know exactly the prices that were being charged for the transportation.

So my commonsense is saying that there shouldn't be a problem with the disclosure of those elements, but the Interstate Commerce Commission has studied it for 2 years and they have obviously not agreed with that commonsense judgment that I have just made, and I would like to know why they have said that.

Senator KASSEBAUM. I think sometimes commonsense doesn't prevail. And the safeguards that were built into that regarding discriminatory practices really have been so hampered by various in-

terpretations put on it that it has not been possible perhaps to work with the best intent at the time the legislation was drawn.

Whether full disclosure would actually change a situation, I am not sure, but as long as there is the belief that it would enable the elevator to be more involved in a truly competitive aspect in this, nor do I see it causing a real problem for the railroads.

I was just curious as to what your thoughts might be.

Mr. SCOCOZZA. I would basically also say that I am surprised that there haven't been that many actual complaints by these small shippers. A lot of the arguments that I have seen from the small shippers are that they feel that there is a problem, but it is not documented.

Perhaps that is just the way the market is going right now. But I do notice from the contracts I have seen, that they involve a tremendous number of small shippers because they are done through brokers. So the contracts actually involve the very small, small grain elevators, but they are done through a major broker who puts a whole network together. I think that is an interesting development

But in terms of the extra length that we went to to enable a good, healthy atmosphere for a small shipper to enter into a contract, it just hasn't really happened to a great extent. I think perhaps that particular situation ought to be looked at as well.

If the atmosphere is still not conducive to a small shipper to have a contract, why isn't it and how can we make the atmosphere better for them?

Senator KASSEBAUM. You can certainly tell, Mr. Chairman, he has been at the State Department for a while. The Department of Transportation is going to be well served by your being there. I have no further questions.

Senator DANFORTH. Thank you very much, Senator Kassebaum.

Thank you very much, Mr. Scocozza. Because of the fact that this is Friday, the attendance is light right now. I would like to keep the record open for another week so that members can submit questions to you in writing to be responded to in writing.

Mr. SCOCOZZA. I have had some questions from the minority staff and I have provided the answers to the committee.

Senator DANFORTH. OK, thank you. And you may be receiving some more questions within the next week.

Mr. SCOCOZZA. I am sure I will.

Senator DANFORTH. Thank you very much.

Mr. SCOCOZZA. Thank you for having me, Senator, and Senator Kassebaum.

[The biographical sketch and answers to questions of the committee follow:]

BIOGRAPHICAL SKETCH OF MATTHEW VINCENT SCOCOZZA

Address: 639 A Street, S.E., Washington, D.C. 20003. Date and place of birth: October 13, 1948; New York City, N.Y. Marital status: Single. Names and ages of children: Not applicable. Education: Jamesburg High School; Jamesburg, New Jersey—Graduated June, 1966. Murray State University; Murray, Kentucky—B.S., History, Speech, Political Science (1970). University of Tennessee, College of Law, Knoxville, Tennessee—J.D. (1973).

Following graduation from college in June, 1970, my only employment was during the summer months of 1970–72 as a head counselor at Camp Len-How, a children's

summer camp in Nicholson, Pennsylvania. Item 8 reflect all professional employment after graduation from law school in 1973.

Government Experience: 1982-Present—Deputy Assistant Secretary of State for Transportation and Telecommunications. 1977-82—Senior Counsel—U.S. Senate Committee on Commerce, Science and Transportation. 1976-77—Senior Attorney—Interstate Commerce Commission, Bureau of Investigations and Enforcement; Court Enforcement Branch. 1975-76—Minority Counsel—U.S. House of Representatives, Committee on Appropriations; Subcommittee on Transportation. 1974-75—Trial Attorney—Interstate Commerce Commission; Bureau of Enforcement, Section of Motor, Water, and Forwarder Enforcement. 1973-74—Tennessee Supreme Court—Law Clerk to Judge Clifford E. Sanders of the Court of Appeals.

Membership: Delta Nu Alpha, Professional Transportation Society, Honorary Life Member, St. Louis, Missouri Chapter (1982-Present). Phi Alpha Delta, Professional Legal Fraternity (1971-Present). Animal Protection Institute, Member. Sigma Phi Epsilon Fraternity (1969-Present). Tennessee State Society, Member (1979-Present).

Political Affiliations and Activities: (a) Affiliations and Activities: Within the last 10 years, I have not held any office in a political organization or election committee. However, during the 1980 Presidential Campaign, I devoted a substantial amount of "off duty" personal time in preparing transportation issue papers for the Congressional Advisory Task Force to the Reagan-Bush Campaign. (b) Financial Contributions: During the last 10 years, my financial contributions were de minimus. I estimate that I donated no more than Twenty Dollars ($20.00) at a time and no yearly aggregate was in excess of $100.00-$125.00. Recipient candidates were predominately state and local Republican candidates for office in Tennessee and the District of Columbia. Contributions were in the nature of "donations at the door."

Honors and Awards: Omicron Delta Kappa, Honorary Leadership and Scholastic Society, (1968-Present). First recipient of the Annual Cooperstown Conference Award (Cooperstown Conference is an association of 27 Northeastern and Midwestern Railroads)

Published Writings: "Mandate for Leadership" (1980), and "The First Year" (1982). Contributing Author: The Heritage Foundation Press, Eds. C. Heatherly and R. Holwill, Washington, D.C.

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QUESTIONS OF THE MAJORITY AND THE ANSWERS THERETO

*Question 1.* To what extent do you envision your office becoming involved in the Department's review of the passive restraint standard as ordered by the Supreme Court?

Answer. My office exercises an oversight function over all significant regulations issued by the Department. In the case of the passive restraint standard, FMVSS 208, the office has been consulting with NHTSA staff on their progress toward the Notice of Proposed Rulemaking that the Department expects to issue in mid-October. The office will be following the subsequent rulemaking action very closely, especially the economic impacts and benefit-cost analyses. The policy office will review the final rule and make recommendations on it to the Secretary as appropriate.

*Question 2.* Do you believe further regulatory reform of the trucking industry is either necessary or desirable?

Answer. I believe there remains a considerable amount of economic regulation of surface transportation, including trucking, which is unnecessary and undesirable, and the Department is committed to working with Congress and the industry toward moving in the direction of less regulation.

*Question 3.* What is your opinion of the Interstate Commerce Commission's implementation to date of the Motor Carrier Act of 1980 and the Bus Regulatory Reform Act of 1982?

Answer. I believe that, on balance, the ICC has done a good job of carrying out the procompetitive intent of both the Motor Carrier Act of 1980 and the Bus Regulatory Reform Act of 1982. For example, in the trucking area, the Commission has greatly liberalized entry, as Congress intended, and has made a series of pro-competitive decisions on such issues as pricing policy, vehicle leasing policies, and the policy concerning railroad acquisition of trucking authority. The Commission has acted in a similarly pro-competitive manner with respect to intercity buses.

*Question 4.* What are your plans concerning your Office's budget for research on the impacts of the truck, household goods carrier, and bus regulatory reform legislation? Do you plan to augment the existing research funding levels?

Answer. DOT allocated about $550,000 in fiscal year 1983 for a study of the impact of deregulation on Class III motor carriers and minority carriers, a study of

the impacts of deregulation on small communities, and a study on the effects of bus reform. In addition, DOT is conducting the bus terminal study with the ICC, mandated by the Bus Regulatory Reform Act of 1982. I expect DOT will allocate about the same amount for fiscal year 1984.

*Question 5.* What is your sense as to how we can balance the various interests involved in the National Airport Policy matter?

Answer. Given the wide range of often opposing interests—the major airlines, the commuter carriers, and communities in the Washington area—I expect a "balanced" answer to National Airport to have two primary characteristics. First, it will be the result of a process in which all the interests are given a full opportunity to express their viewpoints. Second, the outcome will undoubtedly be one with which no one interest group is fully satisfied because each has to yield some ground to the others.

*Question 6.* We are aware that the Administration has not wanted to appropriate funds up to levels authorized by the Airport and Airways Improvement Act of 1982. Do you think that Congress should continue to tax at existing levels when the funds are not expended for the purposes intended?

Answer. I believe that aviation user charges should be expended for legitimate aviation purposes, including the National Airspace System (NAS) plan, the Airport Improvement Program, aviation research and development, and FAA operating costs. However, I do not believe that appropriations should necessarily be in lockstep with authorizations, on a year-to-year basis. Rather, appropriations for each year should reflect program needs and, in the case of the National Airspace System (NAS) plan, should reflect FAA's readiness to proceed with the modernization program. In the later instance, I know that there has been an unavoidable delay in the FAA's contracting schedule which will cause NAS spending to be deferred somewhat, with insignificant delay in the overall modernization plan.

I would strongly oppose any reaction in aviation tax levels. The shortfall in appropriations for the NAS plan will be made up in increased appropriations in the near future and the shortfall in appropriations for the FY84 Airport Improvement Progam is a one-year shortfall that is a small proportion of the total aviation program spending. In future years, I certainly hope that we will also be using the aviation trust fund to cover a significant portion of the costs of FAA operations, rather than asking the general taxpayer to pay for 100 percent of those services, which, regrettably, will be the case next year.

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QUESTIONS OF SENATORS STEVENS AND INOUYE AND THE ANSWERS THERETO

*Question.* Only one U.S.-flag carrier currently engages in any appreciable amount of "cross trading." The vessels of the Consultative Shipping Group Countries (CSG), on the other hand carry on extensive operations in our trades as "cross traders."

(a) What specific current interests are the U.S. trying to protect in the negotiations with the CSG countries concerning the effect of the UNCTAD Code?

(b) What interests are the CSG trying to protect?

Answer. (a.) The United States is concerned that entry into force of the UNCTAD Code will force U.S. carriers currently cross trading in CSG-LDC trades from those trades and preclude entry into such trades by an increasingly competitive U.S. merchant marine in the future. Such restrictions on competition would also discourage new investment in U.S. flag shipping. We want to preserve such trade opportunities, and likewise provide, in exchange, an open and competitive environment in the U.S. trades. We are convinced that open competition is beneficial to U.S. trade and, in the long run, increases employment in the U.S. by enhancing the competitiveness of U.S. products abroad.

(b.) The CSG governments are trying to protect their lines' extensive interests in U.S. trades as cross traders. The CSG governments are concerned that the United States might enter into bilateral agreements which would exclude or severely limit their carriers' opportunities to compete for cargo between the U.S. and LDC's. We have told the CSG countries that as the country with the largest import and export trade in the world, we have a major interest in the benefits of free competition for carriage of cargo, but that one-sided deals in which their carriers may freely compete in our trades but we are excluded from theirs are unacceptable.

*Question.* (a) From the standpoint of protecting the current interest of U.S.-flag carriers, is there any urgency to concluding an agreement with the CSG countries?

(b) Is there an urgency from the standpoint of the CSG?

Answer. (a) The Code will come into effect on October 6, 1983. If this results in the establishment of very protective regimes over the near term, it would be easier to

establish ground rules with the CSG on the effects, both negative and positive, on their carriers before this happens, so there will be no misunderstanding of the consequences.

(b) The CSG countries have said that they feel that it is urgent to have a common policy to preserve access in the world's shipping trades and that it should be in place fairly promptly because of the imminent coming into force of the Code.

*Question.* (a) In the current US/CSG negotiations, is it the U.S. position that any agreement would have to include a guarantee that U.S. carriers must have the ability to operate in CSG/LDC (Lesser Developed Countries) trades where independents are precluded from operating? In other words, if necessary, provide a mechanism to ensure that U.S. operators could join, as a matter of right, otherwise closed conferences.

(b) If this is the U.S. position, is it also our position that all CSG countries would have to agree to guarantee this right before the U.S. would sign an agreement?

(c) Would some CSG countries have to seek domestic legislation before they could make such a guarantee?

Answer. (a) The U.S. position is that U.S. carriers must indeed have the opportunity to operate in CSG–LDC trades even where independents are excluded, because CSG carriers currently enjoy a full opportunity to compete in our trades. This would mean that, where U.S. carriers are excluded from an effective opportunity to compete as independents either because of government action or unfair commercial practices, closed conferences operating in those trades have to be "opened" to all U.S. carriers.

(b) The United States would seek firm commitments from CSG countries that our carriers have effective access to all trades they might wish to compete in including those subject to closed conferences with revenue pools. We would want to be assured that the CSG countries with significant CSG–LDC trades were included as well as those whose principal interests may be cross trading.

(c) We are proceeding on the basis that all participating countries would undertake such measures as necessary to implement their commitments to a potential agreement. It is not clear at this stage that specific legislation would be required. To the extent that legislative measures were necessary, we would insist on them as part of an agreement.

*Question.* Within the context of the current U.S.–CSG negotiations, do you believe we are getting a fair trade when we guarantee CSG carriers access to our open conferences, if the CSG only guarantees our carriers access to CSG–LDC trade as an independent? In other words, to be fair shouldn't the CSG guarantee access to the closed conferences?

Answer. Guarantees of reciprocal access to our trades must provide for equality of treatment in both a qualitative and quantitative sense. In that respect, our guaranteeing CSG carriers access to our trades with their open conferences in exchange for the CSG countries guaranteeing our carriers access to their LDC trades only as independents clearly is not a fair trade. The U.S. side pointed this out to the CSG during the July round of discussions, noting that the significant differences between our ocean shipping legal regimes will result in dissimilar treatment of carriers regardless of good faith guarantees to create essentially equivalent conditions of access in each other's trades. We further stated that we are willing to compete in the European system of closed conferences provided that our access to cargo is not seriously constrained after the UNCTAD Code comes into force. Reduced to fundamentals, our interest is with the bottom line result: do U.S. carriers have effective access or not, looking at the totality of the trade involved. If they do not, then there can be no guarantee of access to U.S. trades. That is our basic position, and we have so stated to the CSG countries, most recently on September 9 in a "U.S. Assessment of U.S./CSG Discussions." A copy of that paper is attached; see particularly our comments on agenda item 3.

U.S. ASSESSMENT OF U.S./CSG DISCUSSIONS

At the conclusion of the July round of these discussions the United States indicated that it would develop an assessment of these talks. This assesment should prove helpful for two reasons: First, it will provide an outline of the major issues and document the U.S. view as to any movement towards reconciliation of differences between the two sides on these issues; second, it will place both sides in a better position to determine whether an agreement can be reasonably forecast.

*Agenda item 3—Competitive access and reciprocity*

The United States indicated in its Working Paper number 7 that it is important to realize that there are significant differences in the legal regimes of each side with respect to ocean liner shipping. These differences produce dissimilar treatment of carriers notwithstanding guarantees to create essentially equivalent conditions of access in each other's trades. In its paper the U.S. pointed out that because of these differences, the consequences of identical commitments to access to CSG shipping lines in U.S. trades may be quite different from access accorded U.S. carriers in CSG trades. The U.S., nevertheless, stated, in Working Paper 4, that it is willing to compete in the European system of closed conferences and deferred rebates provided that access to not seriously constrained once the UNCTAD Code comes into force. Thus, so long as U.S. carriers can effectively compete in CSG trades, the U.S. is willing to attempt to hold open its trades on an essentially equivalent basis.

Agreement between the parties on the recognition of the implications of differing regulatory regimes represents a necessary step towards defining competitive access but it is not sufficient to provide a basis for agreement on competitive access and reciprocity. Regulatory regimes impact on the access to cargo only to the extent that there is commercial access to cargo. Any discussion of reciprocity and competitive access must take into account those factors which serve to limit the size of the market available for commercial competition.

In CSG trades with LDC's, the UNCTAD Code with the Brussels Package will determine the extent of the market open to commercial competition. By applying the Code's cargo-sharing provisions in a 40-60 fashion, the CSG countries have effectively permitted the pool of conference cargo, theoretically open to both sides, to be reduced by 40 percent. Consequently, in stating that they are offering U.S. carriers an opportunity to compete for the carriage of commercial cargoes which is fair and equal to the opportunity enjoyed by their own carriers, CSG nations are stating that they are granting U.S. carriers an opportunity to compete for no more than 60 percent of the conference cargoes. For reasons the U.S. side has detailed earlier, it has doubts concerning the ability of its carriers to enjoy open access to cargo as independents after the Code goes into effect.

On the U.S. side, the outcome of bilateral negotiations will determine the extent to which commercial access is affected. The U.S. appreciates the European concern that the degree of the impact of any bilateral agreement is, for the moment, unclear. Perhaps the most the U.S. can offer is the statement that it is not prepared to cede 40 percent of commercial cargoes to LDC's, indeed the goal of the U.S. is to limit any cargo sharing to less than 40 percent of the trade.

The CSG countries in addressing reciprocity during these discussions have linked the concept of reciprocity to one of national treatment, i.e., the opportunity for the carriers of A to compete in the trades of B should be on a basis which is fair and equal to the opportunity enjoyed by B's carriers. While this is certainly one possible definition of reciprocity, the U.S. believes that it has as its crucial underpinning the assumption that both A's and B's trades are completely open to fair commercial competition. This, in fact, will not be the case when the Brussels Package becomes effective since the conference commercial market, and perhaps the trade, will shrink by 40 percent and, furthermore, European lines will have a much higher probability of gaining access to conference cargo because of the national-flag provisions of the Code and the fact that many European lines are already in the closed conferences. By a similar token, CSG access will be affected by any bilateral agreement that the U.S. may sign.

In light of these circumstances, the United States believes it appropriate to develop an alternative definition of reciprocity for the purposes of these discussions. The U.S. believes that not only should such a definition better suit the circumstances but it should also assist the parties in reaching an eventual understanding of the determination of when resistance fails.

The U.S. proposes that the conditions for reciprocity would exist if the carriers of country A are afforded an opportunity to compete for at least 60 percent of the cargoes in B's trades on a basis which is fair and equal to the opportunity enjoyed by B's own carriers.

It is the position of the United States that this definition combined with our understanding of the parties respective regulatory framework will provide both a qualitative and a quantitative measure of competitive access and reciprocity.

*Agenda item 4(a)—Identification of restrictions on competitive access*

There appears to be a good deal of agreement on this issue. The CSG appears willing to accept the U.S. proposal for a joint inquiry procedure on the understanding that "The European system of closed conference . . . had not distorted competition

or limited the ability of outsiders to compete and/or fight their way into conferences." The U.S. accepts this proposition only to the extent that the future the European system, in fact, provides meaningful competitive access to its trades.

*Agenda item 4(b)—Coordinated resistance*

The U.S. believes there is a convergence of opinion regarding this issue. It seems agreed that commitments to resist must, at this stage, be confined to procedural measures as unforeseen events would make agreement on specific measures difficult.

One troublesome variable in the differing degrees of ability of CSG governments (because of different domestic legislation) to protect the interests of cross-traders. Some, but not all, CSG members indicated that they have the legal ability to come to the assistance of cross-traders via their countermeasures legislation. However, unless all CSG countries possess this ability, a commitment to coordinated resistance could be ineffective in practice.

It also appears agreed that the governments of all U.S./CSG cross-traders in a given trade would be expected to join in a resistance program and failure to participate would preclude a party from enjoying any benefits accorded under an agreement which was arrived at after resistance failed. The U.S. would prefer that all parties participate in resistance, at least in the initial stages, even if their trades were not directly affected.

It was further agreed that the commitment to resistance would have to be drafted to discourage non-participation to only those situations where an overriding political concern made resistance impossible.

*Agenda item 5—Courses of action if coordinated resistance fails*

This item presents several difficult problems. The central problem for the U.S. side is the ability of its carriers to operate in CSG/LDC trades where independents are precluded from operating. Some CSG members appeared to recognize that the only solution would be to find the mechanism to ensure that U.S. operators could join, as a matter of right, otherwise closed conferences. This course of action seemed to cause some CSG governments considerable difficulty as certain nations indicated a willingness to undertake such measures if return guarantees of access from the U.S. were satisfactory. But most were silent and Japan, in our understanding, stated that while its law would permit a conference to deny an outsider membership if the shipping capacity of a particular conference was sufficient to meet the needs of the trade, it does not go to the issue of requiring conferences to accept new members. Thus, there is little here to encourage the U.S. that Japan could meet any obligations established under this item.

The absence of a meaningful commitment on the access issue must bring into question the utility of any possible agreement.

The CSG appears to be insisting that any agreement affecting a U.S. trade must place U.S. and CSG carriers on an equal footing in terms of access to cargo not ceded to an LDC should resistance fail. This CSG demand resolves itself into a commitment from the U.S. that it will not benefit from any agreement with an LDC to an extent beyond which it would otherwise be entitled to under its derogated cargo preference laws. At this stage we would suggest that CGS countries consider their position in light of the alternative definition of reciprocity which the U.S. outlined above.

*Agenda item 5 (bis)—Discussion of bygones*

Here there are elements of agreement, disagreement and obscurity. We appear agreed that exsiting cargo reservation statutes and intergovernmental cargo-sharing agreements should be derogated. The CSG was not prepared, however, to accept the U.S. request that unilateral LDC reservation schemes (with developed country carriers enjoying "associate" status) should *not* be derogated: however we understand from the CSG position that this problem would appear to be partially solved when the Code comes into force since Codist nations will be bound by the cargo-sharing provisions of the Code. Thus, as in the case of CSG/Venezuelan trades, Codist partner's regimes need not be included in the listed derogations.

*Question.* Is it the U.S. position that any bilateral agreement we sign with an LDC will guarantee U.S. carriers a share of the cargo which is equal to the LDC's share? In other words, if the LDC were to get a 40 percent share, the U.S. would insist on no less for its carriers.

Answer. One of our principal objectives in any bilateral negotiation with LDCs will be to limit the amount of cargo that is reserved for sharing solely between the flag carriers of the two trading partners. We recognize, however, that other coun-

tries have quite different policies; therefore, accommodations will have to be reached that meet each side's essential interests. Within such limits, at a minimum U.S.-flag carriers would have to be guaranteed equal access to cargo.

*Question.* Will the U.S. delegation at the U.S.-CSG discussions in London this October be headed by a representative of the Department of Transportation or the Department of State? Is it your understanding that the Secretary of Transportation is the Administration spokesperson on maritime matters?

Answer. As in the past, the upcoming U.S.-CSG discussions will be co-chaired by representatives of DOT and the State Department. The Secretary of Transportation is indeed the spokesperson for the Administration on maritime matters, and the interagency group on international shipping policy is chaired by the Department of Transportation.

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QUESTIONS OF THE MINORITY AND THE ANSWERS THERETO

*Question.* Over the past several years, Congress has passed reform legislation reducing the economic regulation of the airline, trucking, rail and bus industries. Concerns have been raised about the effect of this legislation on both the carriers and the users of the transportation system. How would you assess the impact of this legislation on the transportation sector? Have certain segments been disadvantaged to the extend that further legislation might be necessary? For example, what are your views on further deregulation of the trucking industry?

Answer. My overall assessment of the reforms of transportation economic regulation enacted over the past several years is that they are working well. If confirmed, I would certainly continue to monitor closely the effect of these reform measures.

More specifically, in aviation, many new and expanding air carriers are competing vigorously with established carriers, air service to most communities has increased, and no community having service in 1977 has been "abandoned."

As far as trucking is concerned, service to small communities—a major Congressional concern in enacting the Motor Carrier Act of 1980—has remained as good, or better, than it was before the MCA. Shippers are pleased with the results.

Rail reforms have resulted in much-needed increased profitability for the railroads, as they have won back market share in perishables and "piggyback" traffic. While some shippers—primarily so-called "captive" shippers of coal and grain—are unhappy or apprehensive about the future, rail rates actually increased by much less in the two years since the Staggers Act than in the two years preceding it.

Bus deregulation has resulted in substantial new entry, much of it providing service to points not previously served by bus or replacing points proposed for abandonment by others carriers. Many points proposed for abandonment are little-used "flag stops."

In terms of certain segments being "disadvantaged" by the reforms, clearly shippers and consumers as groups have not been disadvantaged—they have benefited. The affected transportation industries have benefited as well, by the increased flexibility and efficiency that regulatory reform has permitted. Railroad profits are up, and while profits for the airline and trucking industries have decreased or shown losses, the general economic recession has been the primary cause of that problem, worsened in the case of the airlines by high fuel costs and the PATCO walkout. It is interesting that recent Bureau of Labor Statistics data on unemployment in the "trucking services industry"—which includes both regulated trucking and non-regulated trucking employment—indicate an unemployment rate (9.9 percent) for the second quarter of this year which is virtually identical to the unemployment rate for the nation as a whole (10.0 percent).

With respect to further deregulation, I believe there remains a considerable amount of economic regulation of surface transportation which is unnecessary and undesirable. The Department is committed to working with Congress and the industry toward moving in the direction of less regulation.

*Question.* Hazardous materials transportation safety continues to be an area of great concern to Congress, states, localities, as well as the transportation community. Particular concern has been raised about the extent to which state and local regulations should be preempted in this area. What is your view of the Federal role in this area? Could improved enforcement and emergency response capability be provided if coordination between the Federal government and the states and localities were increased? Is there a need for a more uniform set of regulations in this area? Is legislation required such as title IV of S. 1108, the Highway Safety Act of 1983?

Answer. The Hazardous Materials Transportation Act (HMTA) provides that any state or local requirement that is "inconsistent" with the Act or regulations issued

under it is preempted and, therefore, invalid as a matter of law. The Department rules on the consistency of state or local regulations in response to formal requests from affected shippers, carriers, or state and local governments. In general a regulation will be found to be inconsistent with the Federal standards if, in the judgment of DOT, its effect is to reduce overall public safety or to interfere substantially with the uniform regulaory system established by the Federal regulations. Thus, for example, the Department has ruled that hazardous materials packaging and hazard warning requirements that differ with the Federal regulations are inconsistent, both because they have a detrimental effect on safety and because they interfere with the uniform national regulatory scheme. On the other hand, DOT has ruled that state- and locally-enacted routing requirements for hazardous materials are consistent if they are adopted through a process that permits all affected jurisdictions to participate and if they have the effect of enhancing overall public safety. The desirable ultimate goal is for a single, nationwide set of hazardous materials safety regulations, fine-tuned as appropriate to account for special local conditions. We have come a long way toward achieving this goal—to date, 45 states have adopted the Federal regulations in whole or in part. The motor carrier safety grant program authorized by the Surface Transportation Assistance Act will provide an incentive for further state adoption of the Federal standards through its provision of financial assistance to states that adopt and enforce DOT's motor carrier and hazardous materials regulations.

Certainly Federal/state/local government coordination is necessary both for safety enforcement programs and for emergency response to hazardous materials incidents. Local government resources in particular are frequently inadequate to provide effective emergency preparedness programs, and Federal government training and outreach programs can be quite useful in providing local jurisdictions with the planning guidance and technical assistance they need.

I believe the general thrust and objectives of Title IV of S. 1108 are sound. I am not yet sufficiently knowledgeable about the details of the related issues to comment more specifically.

*Question.* Until recently, regulation was the preferred mechanism for ensuring the health of the domestic and international aviations network. Now, domestic markets are deregulated but international markets continue to be regulated. What are the consequences of this divergent approach to aviation and what role, if any, can the Federal Government take to increase international markets for the aviation industry?

Answer. The USG will continue to follow its commitment to improving competitive opportunities for U.S. airlines in international markets. We continue to believe that just as deregulation in the domestic area has brought the best fares, the best service and the most innovative and efficient operations, it can do the same in international markets. However, we must realize that many foreign governments continue to substantially regulate air transportation and if they are regulating from their side then our side will be affected.

In such an environment we will, through bilateral and multilateral negotiations, seek to implement the International Air Transportation Competition Act's policy principles. Thus, we will seek a fair and equal opportunity for our carriers to compete for traffic on a nondiscriminatory basis and when we believe such an environment does not exist, we will take action to rectify the situation.

In my position at the Department of State as the U.S. Government's chief negotiator in civil aviation matters, I insisted on such action. For example, last May the Department of State joined with DOT in requesting the Civil Aeronautics Board to suspend the all-cargo authority of the two Peruvian all-cargo carriers serving the United States-Peru market because of the Peruvian Government's refusal to authorize a U.S. carrier, Challenge Air Transport, to serve Peru in accordance with the rights authorized under the Air Transport Services Agreement. Consequently, the Board took such action, and, as a result, Peru authorized the services proposed by Challenge.

Recently, we have taken other similar type actions. On August 24 the U.S. Government informed the Swiss Government that our present air bilateral agreement with Switzerland is unsatisfactory and that fundamental modifications to the Agreement are required to accord U.S. airlines a fair opportunity to compete with the Swiss air carrier. In this regard, there is a need to provide greater pricing flexibility for U.S. carriers under the agreement and we will seek to obtain this objective in the consultations with the Swiss we have requested to take place within the next two months.

I will continue to urge action such as DOT took on September 12 when in a filing at the CAB it urged the Board to find that Japan engaged in a unfair and restric-

tive practice by refusing to grant Continental Air Lines/Air Micronesia Inc. operating authority under the United States-Japan bilateral agreement, necessary to enable that carrier to commence non-stop service between Guam and Tokyo.

In conclusion, I can assure you that I will not hesitate to direct use of all the administrative, regulatory and statutory tools available to the U.S. Government to guarantee a fair and equal competitive opportunity for U.S. carriers in all our international markets.

*Question.* The Airline Deregulation Act provides for the transfer of the remaining functions of the Civil Aeronautics Board to DOT. Do you favor this action, and if so, what are your views as to where in the Department these programs should be located? How can DOT best ensure adequate isolation from political pressures when making sensitive policy decisions, such as the international route selections?

Answer. The Airline Deregulation Act provides for transferring some (but not all) of CAB's remaining functions to DOT. CAB's two major functions, the Essential Air Service program and the international programs, are scheduled to transfer to DOT, which I fully support.

In response to your questions as to: Whether other CAB functions should be transferred to DOT; where in DOT the transferred CAB functions should be located; how DOT can best ensure insulation from partisan political influence, especially international carrier selection, it would be premature for me to state a definitive answer until I have had a chance to discuss the issues fully with other DOT officials and with the affected interest groups. I have, however, looked at the issues enough to form some general conclusions about the future of CAB functions.

First, a great deal of progress has been made in airline deregulation and we should firmly oppose any efforts to reregulate.

Second, CAB sunset should occur on schedule at the end of 1984 and that sunset should be "real"—that is, we should avoid recreating an independent CAB at DOT. We should instead integrate CAB functions into DOT so that aviation policymaking is coordinated and consistent with transportation policy generally, rather than an independent process where it would be unclear who is in charge and where the guiding policy principles may be at odds with other transportation policy.

Third, DOT can and will administer CAB functions fairly and effectively after the transfer. For international carrier selections, the quasi-judicial process, overseen by a civil service Administrative Law Judge, will be an integral part of the decision process. Congressional oversight, public access to decisionmaking information, and the requirements of the Administrative Procedure Act provide formidable protection from partisan decisionmaking and I am fully committed to ensuring that the DOT decisionmaking process makes full use of those protections.

*Question.* Many aviation user groups are advocating a reduction in aviation fuel and ticket taxes because of the Administration's unwillingness to support appropriations at the authorized program levels. The Administration argues that these lower spending levels help offset rising budget deficits. What are your views on the need for full funding of the Airport Improvement Program and those programs designed to modernize the air traffic control system? Would you support a reduction in aviation tax levels to the point where annual receipts would be commensurate with spending levels?

Answer. I am in full agreement with the Administration position on funding levels for the Airport Improvement Program (AIP) and modernization of the air traffic control system. That is, I believe that the Airport Improvement Program should be funded at annual levels that reflect legitimate and nationally important airport needs, including all safety needs and essential security projects. The National Airspace System (NAS) plan to modernize the air traffic control system should be funded to the full extent that project activity is approved by Congress and FAA can proceed with contracting. If there is a slight delay in the contracting schedule, which is what I understand happened recently, the appropriations unneeded in the current year can be requested in the following year, with insignificant delay in the overall modernization plan.

I do not believe that the Administration argued for lower fiscal year 1984 spending levels for these two programs in order to help offset rising budget deficits. The Administration sought spending levels that reflected program needs, rather than full authorization levels which were in excess of what could be prudently spent during the year. Both the AIP and the NAS programs were adequately and responsibly funded for fiscal year 1984. In fact, the two-year total for the AIP in fiscal year 1983 and 1984 is at the highest spending rate ever in the history of the program and the AIP is one of the few federal domestic programs in which there has been a significant increase in funding.

I would strongly oppose any reduction in aviation tax levels. The shortfall in appropriations for the NAS plan will be made up in increased appropriations in the near future and the shortfall in the fiscal year 1984 AIP appropriations is a one-year shortfall that is a small proportion of the total aviation program spending. And I certainly hope in future years that we will be using the aviation trust fund to cover a significant portion of the costs of FAA operations, rather than asking the general taxpayer to pay for 100% of those services, which, regrettably, will be the case next year.

*Question.* Those close to the Essential Air Service program, which is designed to ensure adequate small community airline service through 1988, believe the program should be restructured to better promote long-term service. What are your views on how effective this program has been to date? Do you view 1988 as a guarantee for ensuring service, or should we consider revising this date?

Answer. I believe the CAB has done a capable job of administering the EAS program. CAB has met the statutory intent of ensuring that small communities have continued air service during a 10-year transition period since the Airline Deregulation Act was enacted, while it has also avoided excessive program costs that would be a burden to the taxpayer. From my knowledge of the program at this time, I would be very reluctant to support any major changes in the program or in its present termination date (1988).

[Whereupon, at 10:15 a.m. the committee was adjourned.]

# NOMINATION—CIVIL AERONAUTICS BOARD

MONDAY, SEPTEMBER 19, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
*Washington, D.C.*

The committee met, pursuant to notice, at 9:05 a.m., in room 253, Russell Senate Office Building, Hon. Nancy Kassebaum presiding.

Senator KASSEBAUM. The hearing will come to order.

It is a great pleasure to welcome the Congressman from the Fourth District of Arizona, Congressman Rudd, who is here to introduce the nominee.

Welcome.

## STATEMENT OF HON. ELDON RUDD, U.S. REPRESENTATIVE FROM ARIZONA

Mr. RUDD. Madam Chairman, I am delighted to appear before your committee this morning for the purpose of introducing Barbara McConnell and also for providing my recommendation of her for the position which she seeks as a member of the Civil Aeronautics Board.

Madam Chairman, I have known Barbara McConnell for a number of years, and I want to let you know that for the past 1½ years or so she has been Executive Assistant to the Chairman of the Civil Aeronautics Board, and as such she has gained a lot of experience and a lot of know-how and a lot of great knowledge in a wide range of aviation activities, including the collapse of Braniff Airline, and a number of other multifaceted problems that are confronted by the Board on a daily basis. Last, she was involved very closely with the sanctions which were brought against Aeroflot, the Soviet airline, as a result of the tragedy of flight 007, South Korean Airlines.

Aside from that, she has had a wide range of experience in a number of different ways in business circles. In Arizona, which she comes from and where I come from, Madam Chairman, she was active with the Arizona State Legislature while she was in school at Arizona State University, active in a number of legislative ways, including transportation problems, the consolidation of a number of different transportation agencies into one for a more efficient, more useful, more productive transportation department for the State of Arizona.

After she graduated from law school and had been practicing law for a while, the very distinguished mayor of Phoenix, our mayor, Margaret Hance, appointed her to the Phoenix Municipal Aeronau-

tics Advisory Board for some reshuffling, for the bringing about of a great deal more efficiency for that board.

She also represented some private sector industries very ably as an attorney.

I am really quite pleased to be able to recommend her for this position because she is a special person and this is a special position that must be occupied by an able person. She is that person and I highly recommend her for that.

I have a statement, and I would like to have it included in the record with your consent.

Thank you, Madam Chairman.

[The statement follows:]

STATEMENT OF HON. ELDON RUDD, U.S. REPRESENTATIVE FROM ARIZONA

Madam Chairman, it is a pleasure to come before you today in support of the recommendation of Barbara Elyce McConnell to the Civil Aeronautics Board.

I have known Barbara for more than a dozen years and I can tell you quite frankly that she is immensely qualified for this position.

As you know, Barbara is, and has been for the past 16 months, the Executive Assistant to the Chairman of the CAB Board. In that capacity, she has been involved in a wide range of aviation activities, including the collapse of Braniff Airlines, the multilateral fare agreement between the United States and the European Civil Aviation Conference, the Chairman's war against the use of commercial aircraft for transporting drugs, access problems at the Nation's commercial airports, a study of computerized reservation systems, enforcement efforts against escrow fund abuse by charter organizations, smoking regulations aboard aircraft, domestic baggage liability and sanctions against the Soviet carrier Aeroflot as a result of the South Korean Airline incident of three weeks ago.

She also has wide experience in Government and business circles that add even more support to her recommendation.

More than a decade ago, while still a student at Arizona State University in Tempe, Arizona, she worked with the State legislature in the reorganization of Arizona's transportation agencies into one consolidated department, which was to improve efficiency and expand the State's transportation focus from automobiles and aircraft to future alternate modes of transportation.

In 1979, just a year after she received her law degree from Arizona State University Law School, she was named by Phoenix Mayor Margaret Hance to the Phoenix Municipal Aeronautics Advisory Board, which oversees the operations of Phoenix Sky Harbor Airport and two satellite general aviation airports. Her work on the board ranged from the development of a new airport terminal to citizen concern about the impact of aircraft noise to master planning for future growth to the use of the commercial airport for military support.

Additionally, she has served as an attorney for two major companies in the city of Phoenix, Arizona.

I realize that the CAB is scheduled to be phased out and I believe that it will take a special kind of person to sit on the Board during this very critical period.

The experience and interest in aeronautics, Government and business that she possesses, makes Barbara McConnell that type of person.

I endorse her appointment to the Board and I urge you to give her every consideration during your deliberations.

Thank you.

Senator KASSEBAUM. It will be so done, and we appreciate your coming over from the House side, because I know you have commitments. Thank you very much for joining us this morning.

It is a pleasure to welcome Senator DeConcini from Arizona for an opening statement.

## STATEMENT OF HON. DENNIS DeCONCINI, U.S. SENATOR FROM ARIZONA

Senator DECONCINI. Chairman Kassebaum, thank you very much.

I am pleased to join my distinguished colleague from the House, Mr. Rudd. It gives me great pleasure to appear here today in behalf of Barbara McConnell who has been nominated to become a member of the Civil Aeronautics Board. It is not every day that I have the privilege of coming before this congresssional committee in support of a woman from my State for such a high-level position in Government.

While Barbara has lived in the District of Columbia for the past year during her tenure as Executive Assistant to the Chairman of the CAB, she has spent the major portion of her life in Arizona and has made many notable contributions to numerous civic and professional organizations in our State. Needless to say, I am gratified that Barbara McConnell has been chosen by the administration to fill a vacancy at the CAB and believe the President should be commended for selecting someone whom I know has the qualifications and credentials to oversee airline policy and regulation in this country and abroad.

Barbara has an excellent educational and professional background. She received a bachelor's, master's, and a law degree from Arizona State University and has held professional positions with major corporations headquartered in Arizona. She has proven herself to be a dedicated, persistent and independent individual who can work under pressure and make the many difficult decisions that will continue to confront the CAB. She has worked within the organizational structure and understands the "give and take" relationships of Board members.

Additionally, Barbara McConnell has received many distinguished honors and awards both at the State and national level and has a demonstrated knowledge of local, State, and national transportation problems. I am confident that she will carry out her duties in a professional manner and bring integrity and proven sound judgment to future negotiations at the Board.

I heartily endorse the nomination of Barbara E. McConnell to be a member of the CAB and urge my colleagues on the committee to support her confirmation. She brings to Washington a spirit that was molded in Arizona of which we are proud. I know her appointment will be a fine asset to this important board at a critical time in aviation history. I again compliment the President.

Madam Chairman, thank you for your time, I know you are a very busy person to sit through these hearings, and it is very important to us in Arizona. We thank you for your courtesies.

Senator KASSEBAUM. Thank you, Senator DeConcini.

I would also like to add to the record, statements by Bob Stump, the Congressman from the Third District in Arizona, and Senator Barry Goldwater who could not be here this morning but wishes for his statement to be included in the record. Congressman McCain from the First District in Arizona, has also submitted a statement.

[The statements follow:]

STATEMENT OF HON. BARRY GOLDWATER, U.S. SENATOR FROM ARIZONA

Madam Chairman, it gives me great pleasure to be able to introduce for consideration as the newest member of the Civil Aeronautics Board, Miss Barbara McConnell. Miss McConnell is a friend of mine, a friend of the Republican Party, and one of the most capable young women I know.

As most of the members of the Committee are aware, Miss McConnell has been the Executive Assistant to the Chairman of the Civil Aeronautics Board for the past year and a half and, in that capacity, has had the opportunity to work closely with other members of the Board and the staff. There is probably no one in the private sector who is as knowledgeable of the issues and operations of the Civil Aeronautics Board. Although not a native Arizonan, Barbara has endeared herself to many people in our wonderful state. She served with the State Government, with the Arizona Association of Counties and with private industry. More than that, Barbara McConnell has distinguished herself in every academic endeavor and I can heartily testify to her ability to articulate the issues. Barbara served as a surrogate speaker for me during my 1980 campaign for the Senate on some occasions when I could not possibly be in two places at once. As a result of her speeches, I received many very favorable comments. I know that my opponent in that general election was impressed as well.

Miss McConnell is a lawyer, and an excellent one, a professional woman with the highest reputation and an individual whom I can recommend, without equivocation, for this important position as a member of the Civil Aeronautics Board. There are many significant issues in aviation which must be judged by the Board in these next few years and I know of few individuals more capable of articulating and wisely judging the merits of the cases which will come before the Board. We Arizonans are proud of this young lady and I urge early and favorable consideration by this Committee on her nomination.

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STATEMENT OF HON. BOB STUMP, U.S. REPRESENTATIVE FROM ARIZONA

Mrs. Chairman and other Members of the Subcommittee, it is my pleasure to show my support in favor of the appointment of Barbara E. McConnell to the Civil Aeronautics Board.

Barbara's past professional positions and varied experiences highly qualify her to serve as a CAB Member. I first became acquainted with Barbara in 1972, during her involvement with reorganizing state government to create the Arizona Department of Transportation. The newly formed Aeronautics Division expanded Arizona's focus to air travel and other future modes of transportation.

Since that time, Barbara's specific interest and expertise in aviation has intensified. She was a member of the City of Phoenix Municipal Aeronautics Advisory Board during a period of major terminal expansion to meet increased commercial and military use demands. This brought her into contact with involved community leaders, concerned citizens, and major airline companies as the new airport developed and began operation. Barbara's administrative and business background helped immensely during this period.

Miss McConnell had the opportunity to further utilize those skills when she was an attorney for a major Arizona based Fortune 500 corporation. Her interest in aviation continued and she also acquired antitrust and international law experience. In addition, she traveled often by domestic and foreign air transportation.

All these skills and experiences with aviation coalesced when Barbara became Executive Assistant to CAB Chairman, Dan McKinnon. In that capacity she has worked with the Board members on all aspects of United States aviation policy. She has participated in all Board activities of authorizations, rates and fares, subsidy and community service, international aviation, and related administrative duties.

I believe that Barbara E. McConnell is highly qualified to serve as a member of the CAB. She has an excellent background in law, business and administration. She has attained good governmental and political experience. Her involvement with and interest in aviation is vast.

Most importantly, Barbara is now attuned to the functionings of the Board. She is already acquainted with U.S. airports and leaders in the industry. Barbara has also worked with the other board members and those representatives from involved departments or constituent groups.

I highly recommend and support Barbara E. McConnell's nomination to the Civil Aeronautics Board.

Thank you for the opportunity to express this support to the Subcommittee.

STATEMENT OF HON. JOHN MCCAIN, U.S. REPRESENTATIVE FROM ARIZONA

Mr. Chairman, I welcome the opportunity to express my very strong support and endorsement for Barbara E. McConnell to serve as a Member of the Civil Aeronautics Board. Her impeccable credentials and leadership in the public as well as the private sectors make her an outstanding and highly qualified choice for the position.

Since May of 1982 Barbara has been the Executive Assistant to CAB Chairman Dan McKinnon. In this capacity she participated in the multilateral fare agreement between the United States and the European Civil Aviation Conference; the Competitive Marketing Decision, in which the CAB allowed competition to travel agencies; the aftermath of the Braniff Airways' bankruptcy and the United States' response to the Korean Air Lines disaster.

Before coming to the Board, Barbara was an officer of and lawyer for Southwest Forest Industries, a Fortune 500 Corporation headquartered in Phoenix, Arizona. From 1976 to 1980 she was an attorney with the Greyhound Corporation.

In 1971 and 1972 Barbara worked with the Arizona State Legislature and was instrumental in reorganizing the state's transportation agencies into one consolidated department designed to improve efficiency and expand the state's transportation focus from automobiles and aircraft to alternative modes of transportation.

In 1979 Phoenix Mayor Margaret Hance and the City Council nominated Barbara to the Municipal Aeronautics Board, which oversees the operations of Phoenix Sky Harbor Airport and two satellite airports.

Barbara's background speaks for itself. Her appointment would be a highly valuable addition to the Civil Aeronautics Board, and I strongly urge this Committee and the full Senate to act affirmatively and quickly on her confirmation. Thank you.

Senator KASSEBAUM. It is a pleasure to have you before us as a nominee for the Civil Aeronautics Board. It is a very important position at this time, and I, myself, am delighted to see someone nominated with the experience that you have gained. As we sunset the CAB, there are some very important decisions that must be made.

So welcome; do you have an opening statement that you would care to make, Ms. McConnell?

## STATEMENT OF BARBARA McCONNELL

Ms. MCCONNELL. Thank you, Madam Chairman. I have no prepared statement, but I would like to say that it is a great privilege to be here. I am honored that the President should see fit to nominate me and, if confirmed, I would look forward to a close working relationship between the Civil Aeronautics Board and this committee.

Senator KASSEBAUM. It, I suppose, seems ironic at a time when we are all wondering how it should be phased out that one needs such exceptional talent at this point in time so that it can be done well. I would like to ask you briefly for your thoughts on that procedure at this time. It has proved somewhat difficult because at the same time that we are reducing funding at the CAB, we still are expecting many of the services to continue to be provided.

Ms. MCCONNELL. It is a very difficult time and there are major challenges facing the CAB as it rides into sunset and transfers the functions that had been performed there over to DOT or other successor agencies. I think that it is a major issue that needs to be confronted, given a great deal of thought, and will take resources that would not be required for a smooth continuing function. With the appropriate attention the sunset can occur without any interruption of our national aviation policy and with the continuation of firm and productive international negotiations. I look forward to playing a role in that.

Senator KASSEBAUM. I guess that somewhat answers my question on what your thoughts are about what would happen to the international route awards. I assume you are not really willing to make a definite commitment at this point in time, or do you have some thoughts?

Ms. MCCONNELL. I would prefer not to make a firm statement on how international route awards ought to be handled. It is a matter that the Board has not taken a stance on, and I might be called upon to make such a determination if confirmed. I would like to reserve judgment for that time.

Senator KASSEBAUM. Another one of the areas that has proved troublesome and controversial is interlining and the competitive marketing investigation. I wonder what your thoughts might be in that area.

Ms. MCCONNELL. I think interlining is one of the basic underpinnings of our whole air transportation system. There have been some arguments that interlining is jeopardized by the competitive marketing decision. I did work on that decision and I was active in the review of the evidence that was presented. Frankly, Madam Chairman, I didn't see, and at this point I still don't see that interlining is being jeopardized by the Board's competitive marketing decision. Interlining is a very important part of the aviation system, and I think it needs to be preserved. I don't think that the competitive marketing decision jeopardizes interlining.

Senator KASSEBAUM. We will be holding some hearings in the first part of October on this very question, and perhaps you will be a part of those who will be testifying at that time.

I would just like to say again that I think it is a very important position, because obviously the strength of our aviation industry and the future of aviation very much depend on how we really address the functions that have been handled by the Civil Aeronautics Board, and where they go. I think you have your work cut out for you. My congratulations and best wishes.

Ms. MCCONNELL. Thank you very much, Madam Chairman.

[The biographical sketch and answers to questions of the committee follow:]

BIOGRAPHICAL SKETCH OF BARBARA MCCONNELL

Name: Barbara Elyce McConnell, Barbara Elyce Everett (June, 1973 through March, 1974). Address: 2105 S Street, NW., Washington, D.C. 20008. Date and Place of Birth: December 26, 1950; Indiana County, Pennsylvania. Marital status: single. Names and ages of children: N/A.

Education: Arizona State University; 1968-1978 B.S. Liberal Arts—Political Science; 1972 Masters in Public Administration; 1975 Juris Doctorate; 1978.

Employment Record since College: Executive Assistant to Chairman; Civil Aeronautics Board; Washington, D.C.; May, 1982 to present. Assistant Secretary and Associate General Counsel; Southwest Forest Industries; Phoenix, AZ; April, 1980 to May, 1982. Attorney; Greyhound Corporation; Phoenix, AZ; August, 1976 to April, 1980. Employed throughout college in various part time and full time posts.

Government Experience: Civil Aeronautics Board, Executive Assistant to Chairman; May, 1982 to present. Arizona State Government, Legislative and Administrative Intern; June, 1971 to October, 1972. Arizona Association of Counties; Assistant Director; Phoenix, AZ; October, 1972 to March, 1973. Yavapai Community Hospital; Personnel Director; Prescott, AZ; March, 1974 to September, 1975.

Memberships: Charter 100; Phoenix, AZ; 1981 to present. Valley Leadership; Phoenix, AZ; November, 1979 to present; Executive Board; Alumni Board, Charter group participant. American Society of Public Administration; Arizona State Uni-

versity, Tempe, AZ; October, 1968 to present. American, Arizona and Maricopa County Bar Associations; Phoenix, AZ; April, 1979 to present. Phoenix Committee on Foreign Relations; Phoenix, AZ; January, 1981 to present. High Country Hounds; Flagstaff, AZ; 1981–1982. 4–H; Clarksburg, PA; 1959 to 1965. Girl Scouts; Blairsville, PA; 1959 to 1964. Kalorama Court Homeowners Association; Washington, D.C.; President; 1983 to present. Reading for the Blind Lions Club; Phoenix, AZ; 1975. ASU Alumni Association; Tempe, AZ; 1976-present. ASU College of Law Association; Tempe, AZ; 1978-present.

Political affiliations and activities: Speaker, Ronald Reagan for President, 1976, 1980. Promoted Arizona business leaders for Candidate Ronald Reagan, 1976. Charter Board Member, Arizona Republican Caucus (A Republican young professionals' issues group). Executive Committee, Arizona Republican Caucus. Finance Committee Chairman, Arizona Republican Caucus. Republican Deputy Registrar. Speaker, Republican Candidates including U.S. Senate, Congress, Arizona State Legislature, Phoenix City Council. Member, Trunk 'N Tusk (Arizona Republican Fundraiser). Republican Precinct Committeeman. Republican Campaign Advisor and worker. Elections since 1970 (finances, speeches, signs, pamphlets, letters). Intern to Republican Transportation Committee Chairmen, Arizona State Legislature, 1972. Yavapai Community College Liberal Arts Council; Prescott, AZ; Academic 1973–1974; Executive Council. Maricopa County (AZ) Hospital Beds Assessment Task Force; Maricopa County, AZ; 1980–1981. Various Republican political contributions, financial and in kind, from 1971 to present, totalling approximately $4,000.

Honors and Awards: Dubois Law Scholar. Palo Verde Scholarship. Woman of the Year, Arizona State University. Institute of Strategic Studies, London, England. Governor's Outstanding Performance Citation, Arizona State Government. Political Science Honorary. Public Administration Honorary. National Community Partnership Participant, Minneapolis. Outstanding Young Women of America.

Published Writings: Reorganization of Arizona State Government. Published by the Arizona State Legislature, 1972; Cooperatively written for Legislature. County Home Rule in Arizona. Published by the Arizona State Legislature, 1973; Cooperatively written for Legislature. Arizona Department of Transportation. Published by the Arizona State legislature, 1972; Cooperatively written for Legislature. Arizona Department of Commerce. Published by the Arizona State Legislature, 1972; Cooperatively written for Legislature.

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### Question of Senator Kassebaum and the Answer Thereto

*Question.* Many individual observers regard Computer Reservation Systems controlled by a few carriers and the potential abuses to such control as the most serious threat to the kind of competitive air transportation system which the Congress sought when it enacted airline deregulation. Do you believe that the Board and staff have to date acted with sufficient vigor and dispatch to get on top or this issue and to decide whether and what kind of regulatory action is in the public interest? What steps, if any, do you believe that you can take as a Member to speed up the Board's approach to this issue?

Answer. I believe that the Computer Reservation Systems issue is one of great significance to the competitive air transportation system. I heard and read the many allegations at congressional hearings and in petitions before the Board which raised the possible anticompetitive impact of Computer Reservation Systems.

To sustain future challenges the Board must develop competent evidence. The Board's "Advance Notice" mechanism may add some time to the total process but allows the Board greater flexibility in developing the final form and scope of any possible rule. This is fairer to the legitimate interests of both the CRS owners and other interested parties.

Since the "Advance Notice" has already been issued (September 9, 1983), much of the timing of the proposed rulemaking is now in place. However, as a new Board Member I will take a personal interest in ensuring that this item maintains its priority position on the agenda and that the Board and its staff expedite resolution of this matter.

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### Questions of the Minority and the Answers Thereto

*Question.* For the past 16 months you have worked as the Executive Assistant to the Chairman of the Civil Aeronautics Board. Please discuss the experiences you have gained at this position, as well as any other relevant work you have done, that makes you qualified for the position of CAB Member.

Answer. In my capacity as Executive Assistant to CAB Chairman Dan McKinnon, I have worked with the Chairman and other Members of the Board to develop and implement the United States aviation policy.

More specifically, I've had the opportunity to work with staff, industry, the aviation public and the other Board Members with regard to the following issues:

The Braniff collapse. The Multilateral fare agreement between the U.S. and the European Civil Aviation Conference. Western-Wien-AIA Merger. Competitive Marketing Decision. Chairman's war against the use of commercial aircraft for transporting drugs. Access problems at the nation's commercial airports. Computerized Reservation Systems Study. Chairman's enforcement efforts against escrow fund abuse by charter organizers. Braniff-PSA Joint Operating Agreement. Canadian "Seat Sale" controversy. Employee Protection Provisions. People Express bumping and baggage waivers. Sanctions against Soviet carrier Aeroflot as result of KAL incident. Domestic baggage liability raised to $1,000. Smoking aboard aircraft.

In addition, I've worked with aeronautics interests at the state, local and federal levels. Over a decade ago, I worked with the Arizona State Legislature to reorganize Arizona's transportation agencies into one consolidated department. The goal of the reorganization was to improve efficiency and to expand Arizona's transportation focus from automobiles and aircraft to future alternate modes of transportation and intermodal operations.

In 1979 Mayor Margaret Hance and the City Council invited me to serve on the seven-member Phoenix Municipal Aeronautics Advisory Board, which oversees the operations of Phoenix Sky Harbor airport and two satellite general aviation airports in the Phoenix metropolitan area.

In this capacity I worked with the development and operation of a major new air terminal, citizens' concerns about noise impact, master planning for future growth of a major metropolitan commercial airport, passenger access, air carrier access, and the use of the commercial airport for military support.

In addition, as an international lawyer for a multi-national Fortune 500 corporation, I have been a frequent user of the United States and foreign air transportation systems. I have traveled to forty-three of the nations fifty states and many foreign countries.

My past experience as an attorney adds negotiating skills that can be used in the CAB's international aviation treaty negotiations.

Finally, I have enjoyed the opportunity with the State Department and Department of Transportation as well as with the industry, the airports and other constituent groups in my past capacity as assistant to the CAB Chairman. Through all of these experiences I have gained an understanding of the issues and personalities involved at the Civil Aeronautics Board and these have resulted in my enthusiasm for the goals of maximizing the United States' position in our international and domestic aviation strength.

*Question.* As his Executive Assistant, you have worked very closely with Chairman McKinnon. Do you anticipate any special problem in making the transition from this position to Board Member?

Answer. I do not anticipate that a shift from Executive Assistant to Board Member will cause any special problems. In fact, I see the shift as a real benefit. I have enjoyed working with the Chairman since May, 1982. Therefore I have had an excellent opportunity to understand CAB issues.

I greatly respect the Chairman and three other Members of the CAB. Each has shown wisdom and courage in deciding difficult issues and I would be honored to be counted among them.

If confirmed, I would look forward to exercising my own judgment in voting on the important aeronautics issues arising during my term.

*Question.* What issues in aviation would you like to establish as high priorities during the remaining months of the CAB?

Answer. I believe that the following issues should be of high priority at the Board until its sunset:

COMPUTER RESERVATIONS SYSTEMS

The Board has issued an advance notice of proposed rulemaking on the alleged problems with respect to the Computerized Reservation Systems. The Board should measure the extent of any antitrust and consumer problems that may exist, and decide whether the benefits of regulation will exceed their costs.

### INTERNATIONAL AVIATION

The Board will be facing a heavy schedule of major negotiations. In the next three months negotiations are scheduled with Italy, Peru, Switzerland, Netherlands Antilles, Trinidad and Tobago, Germany, Malaysia, Spain, Thailand and China. In addition, the countries involved must decide whether the ECAC Agreement on pricing should be continued, and if so, in what form.

We will have the challenge of promoting United States aviation policy in a way that benefits the public through ensuring price and service competition and preventing unfair discrimination against our flag carriers. We must strive to eliminate "doing business" laws, service fees, and currency laws that discriminate against our carriers. The Board must also continue its enforcement efforts to ensure compliance by foreign carriers with U.S. laws and regulations and negotiated bilateral agreements. In negotiating those agreements, the Board must act to prevent the giving away of valuable rights while receiving "rights" in return that turn out to be illusory.

The Board's examination of "Visit USA" fares will sharpen the definition of foreign air transportation. In November 1981, the Board ordered an investigation into the lawfulness of such fares by a number of U.S. carriers. The investigation was begun after complaints by two foreign carriers that the fares should be filed in tariffs, are unjustly discriminatory, and violate bilateral agreements. An administrative law judge has made a recommended decision to the Board, which the Board is now reviewing.

Over the next several months, the Board will be reviewing several temporary experimental certificates issued to U.S. carriers for foreign air transportation. These cases will help the Board to evaluate the concept of this type of certificate as a substitute for the market incentive of free entry in international transportation.

### CONSUMER RULES

A continuing major item on the Board's agenda will be smoking aboard aircraft. It is a difficult issue—one about which members of the public have strong opinions, and on which our national customs appear to be in a state of transition. The Board is now considering adoption of a final rule on this matter.

The Board has been considering whether to change its rules for the carriage of baggage. It recently instructed the staff on several areas of concern, but has yet to make a final decision that settles all aspects. The Board is also continuing its review of the denied boarding rules, requiring compensation for those bumped from flights. It must decide whether there should be exemptions to its general rule for compensation and if so, to what extent.

Another major area of consumer protection is how the charter industry should be governed. The Board proposed to completely rewrite its charter rules and is now reviewing comments on the proposal. As with the smoking rules, these rules require a balancing of government intervention versus competition to solve a service problem. The Board before sunset should take the lead in deciding these issues.

On another somewhat different subject, the Board has found that some applicants for air carrier certificates have begun selling tickets for flights before they received authority to operate. The Board is considering several options to deal with this situation, and has issued a notice of proposed rulemaking, asking for comments on various proposed solutions.

### COMPETITIVE MARKETING

The Board will be reviewing implementation of its Competitive Marketing Investigation, opening the sale of airline tickets to competition. The airlines will be submitting revised agreements to conform their practices to that decision. It will be up to the Board to monitor the implementation of the decision so that it is carried out under the policies of the Deregulation Act.

### ESSENTIAL AIR SERVICE

The Board will continue the small communities program under the policies of the Deregulation Act. I believe that this is one of the most important tasks for the Board. It must ensure that eligible communities continue to receive access to the national air transportation system in the most cost-effective manner.

AIRLINE EMPLOYEE PROTECTION PROGRAM

The Board has begun the process of determining eligibility for compensation under section 43 of the Airline Deregulation Act. Cases are now before administrative law judges. The Board must decide whether deregulation was the major cause of loss of employment of employees at certain carriers.

SUNSET

The Airline Deregulation Act left several important questions unanswered including consumer protection, rulemaking authority, economic fitness findings, and report collection. These issues need to be addressed before sunset of the Board.

I have not attempted to place items in order of priority. Each of them is very important and deserves close attention.

*Question.* The Board is currently scheduled to sunset on December 31, 1984. Do you favor an early sunset, or should we stay with the existing date? Do you think the Department of Transportation is the appropriate location for those remaining functions, or should the Congress consider alternatives for transferring these programs?

Answer. I believe the CAB should sunset no later than December 31, 1984. I think an earlier date would have some benefits but as we get closer to the slated sunset date the advantage to accelerating the transfer decrease.

I think the smooth transfer of functions is a very high priority in the remaining days of the CAB as I indicated in my previous answer.

The legislative history shows Congress considered a number of alternatives and DOT was selected as the most logical successor. I concur with that judgment.

*Question.* If confirmed as a Member of the CAB, what would you view as your role during the CAB sunset?

Answer. I would strive to ensure that the Board carries out the policies of deregulation expressed by Congress in the Airline Deregulation Act as it moves to sunset. The programs that are ending should end in a manner that avoids unnecessary strains on the industry and preserves the effective national air transportation system.

For those programs that are being transferred, I would work with DOT and the other successor agencies to retain the high degree of competence and professionalism that the industry and the traveling public deserve.

In order to achieve this goal, as a Board Member I would be an active participant in the collegial body. Yet as a member of an independent regulatory agency, I will exercise independent judgment. I hope to demonstrate leadership to establish or enhance wise national policy in air transportation.

*Question.* What are your views about airline deregulation and the cries for some form of re-regulation?

Answer. I believe that deregulation has been a very positive move.

I am convinced that generally fares are lower and service is better than it would have been without the elimination of the costly and time consuming regulatory procedures that allocated routes and standardized fares prior to the ADA of 1978. I enthusiastically support the elimination of the governmental red tape that impaired market decision making.

But I am very concerned about the service disruptions that have been threatened and have occurred in certain communities. Transition from the historical system to deregulation has been with some pain but I think it would do injustice to this system if we gave up on it after just five years.

The problems continue in the aviation industry of the U.S. Domestically the CAB has changed its focus from a regulator of internal airline decisions to a partner in promoting more and improved air service.

Internationally deregulation has not occurred. The CAB must persevere, working with its aviation partners at DOT and State, to enhance the business opportunities for U.S. carriers in foreign markets. Tough negotiating and careful cooperation with our aviation industry providers and users would be my guide, if confirmed.

In conclusion, while it has had its pains of transition I believe that deregulation will prove to be a positive force in U.S. transportation policy.

*Question.* Those close to the Essential Air Service program, which is designed to ensure adequate small community airline service through 1988, believe the program should be restructured to better promote long-term service. What are your views on how effective this program has been to date? Do you view 1988 as a guarantee for ensuring service, or should we consider revising this date?

Answer. The goal of the EAS program as established by the Airline Deregulation Act is to assure access to the national air transportation system, at a reasonable

cost to the taxpayer, during the transition to a deregulated industry, EAS was generally designed to cushion the shocks of deregulation, not to replace the laws of supply and demand. While it has had problems the EAS program has generally been effective in achieving the goals set for it.

Some argue that the EAS funds should be used to develop a market and promote a community by making air service available. But any major change in objectives—such as to make a promotional tool—will increase costs to the government and therefore the taxpayer. It also would be inconsistent with the legislative history of the program, which contemplates reliance on market forces once the commuter carriers have had a chance to mature into their role as replacements for large-aircraft operators in the small communities.

It is too early to tell whether the EAS program should be continued beyond 1988—in some cases, such as extremely isolated communities, additional time might be desirable. The program is five years from conclusion under current law. I would want to watch the program carefully over the next year to decide upon its future beyond 1988.

*Question.* The controversy over the degree of airline computer reservation system bias has increased significantly in recent months. The Board is now in the process of preparing regulations to address this issue. Do you believe this is an appropriate response to the concerns that have been raised, or do you favor a more extreme response, such as legislation?

Answer. On September 9, the Board adopted an advance notice of proposed rulemaking seeking comments about three areas of competitive concern:

(1) Bias in the way that airline computer reservation systems display flight and fare information to travel agents;

(2) Differences in the prices that the airline owners of these computer reservation systems charge other competing airlines to have their information made available to travel agents; and

(3) Manipulation or unfair use of confidential market data that is contained in the computer reservation systems.

I agree that the Board should take a critical look at the allegations of unfair competitive practices and this examination should be completed quickly.

In my view, it would be premature to advocate legislation now. If substantial or pervasive competitive abuses exist, then discrete rules may be inadequate to deal with these problems.

In fairness to all concerned, however, I think that the Board should first undertake a critical look at the problem to establish whether there is a need for government intervention.

*Question.* The Congress is now considering legislation to vacate last year's CAB decision on the Competitive Marketing Investigation case. What are your views on the Board's decision and efforts to reverse it?

Answer. I support the Board majority's CMI decision. I favor allowing greater flexibility for the air carriers to market their services through new channels if the carrier trusts these new channels.

I compliment the travel agents for their 40 year history of reliable and efficient service. The value of travel agents is particularly evidenced by recent statistics which show travel agents helping over 60 percent of the airline passengers.

The CMI decision on antitrust immunity is open for reexamination by the Board prior to December 16, 1984, during what, with your confirmation, would be my tenure. I am willing to listen to facts and arguments about this issue, should it be brought before the Board again.

Senator KASSEBAUM. Thank you.

[Whereupon, at 9:15 a.m., the committee adjourned.]

# NOMINATION—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

WEDNESDAY, OCTOBER 26, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
*Washington, D.C.*

The committee met, pursuant to notice, at 9:34 a.m., in room SR-253, Russell Senate Office Building, Hon. John C. Danforth presiding.

## OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. This morning, the Commerce Committee is holding its hearing on the nomination of Diane Steed to be Administrator of the National Highway Traffic Safety Administration of the U.S. Department of Transportation.

NHTSA has been charged with an important mandate: to save lives and reduce injuries. In September, the Surface Transportation Subcommittee held a hearing on oversight of NHTSA. The testimony presented at that hearing strengthened my belief that there is a philosophical objection to safety regulation on the part of the Reagan administration. It is clear to me that Congress must give this administration clear direction as to actions it must take to fulfill its mandate to insure and improve highway safety.

A specific example of this administration's view on highway safety is the recently issued NHTSA notice of proposed rulemaking on the occupant crash protection standard. The administration says it is concerned about highway safety. My response is show me. Instead of taking action to save the lives of at least 8,500 Americans each year, the administration has chosen in this rulemaking to study auto safety issues that have been studied over the past 14 years. We don't need more studies about airbags—we need to take action. We need implementation of a meaningful passive restraint standard.

I look forward today to hearing from Miss Steed about her goals as NHTSA Administrator and what improvements in highway safety regulation she hopes to achieve and believes can be achieved under the current administration.

I have an opening statement by Senator Hollings which will be placed in the record.

[The statement follows:]

OPENING STATEMENT BY SENATOR HOLLINGS

The Committee is considering the nomination of Ms. Diane Steed to be Administrator of the National Highway Traffic Safety Administration (NHTSA). Ms. Steed's nomination comes at a time when the agency faces a number of important issues. On October 14, 1983, NHTSA issued a notice of proposed rulemaking reopening the "passive restraint" issue. NHTSA took this action in compliance with the June 24 decision of the Supreme Court overturning NHTSA's rescission of the "passive restraint" standard, holding that the decision to rescind was "arbitrary and capricious." NHTSA has asked for public comment on issues raised by the notice by December 15, 1983. A decision is set for no later than July 11, 1984. NHTSA should, of course, move as expeditiously as possible to comply with the Supreme Court's ruling.

On October 20, 1983, this Committee favorably reported S. 1108, an omnibus highway safety bill. S. 1108 directs NHTSA to take action in the following areas:

(1) Anti-lacerative windshields; (2) High-mounted rear stop lamps; (3) Automobile bumpers; (4) Side impact protection; (5) Emergency warning devices; (6) Truck occupant protection; (7) Automobile crashworthiness data; (8) "Gray-market" vehicles; (9) Drunk driving; and (10) Motor carrier safety.

Ms. Steed, if confirmed by the Senate, will face these and other important issues as Administrator of NHTSA. NHTSA moved quickly to implement the drunk driving bill passed last year. I hope the agency, under Ms. Steed's guidance, will respond as quickly to other Congressional concerns.

For example, a recent GAO study criticized NHTSA for failing to respond quickly and efficiently to alleged braking defects in GM's X-cars. A hearing was held by the House Commerce Committee where NHTSA was urged to reform its procedures to respond in a timely fashion in automobile defect cases. Also, motor vehicle theft legislation is currently being considered by this Committee. A new draft of this legislation is being worked on and NHTSA's prompt evaluation of the new bill will be important when the Committee considers the bill.

Senator DANFORTH. Do you have a statement, Senator Lautenberg?

## OPENING STATEMENT BY SENATOR LAUTENBERG

Senator LAUTENBERG. Yes.

Senator DANFORTH. Do you want it in the record, or do you want to read it?

Senator LAUTENBERG. I will read it, if you do not mind.

I had a chance to talk to Miss Steed yesterday and welcome her to the committee. You probably know that New Jersey has some of the highest insurance rates or the highest insurance rates in the Nation.

There are several reasons for that, some of which are being addressed at the State level. We continue to lose too many of our young people to auto accidents, and I am most concerned with the issues of safe cars and safety conscious drivers and, therefore, concerned with your activities as head of the agency charged with overseeing Federal policy in this area.

So I am pleased to have the opportunity to meet with you and talk to you again about these issues and look forward, assuming that the chairman has the votes in hand, to your long service in this assignment.

Welcome.

Senator DANFORTH. Senator Dole and Senator Kassebaum are here. We are delighted to have you. Who would like to speak first?

Senator DOLE. I think I will defer to a member of the committee.

Senator KASSEBAUM. I just have a very few comments to make. It is just a great privilege to be here with a fellow Kansan as well as a fellow alumna of the University of Kansas who I think will un-

doubtedly bring to her role at the National Highway Traffic Safety Administration a great deal of administrative expertise, as well as dedication to the concerns of that particular administration.

I know it is a concern certainly of both of you, who have provided strong leadership in the committee for highway safety conditions, and I wish you well, Diane, in this new role.

Thank you.

Senator DANFORTH. Senator Dole.

## STATEMENT OF HON. BOB DOLE, U.S. SENATOR FROM KANSAS

Senator DOLE. Well, I want to share the statement made by Senator Kassebaum and assure the committee that it is not an effort to put a lot of Kansans in the Department of Transportation. I guess there is one other there, but I am not sure if she is from Kansas or North Carolina.

In any event, it is a pleasure to be here because it is a rare opportunity. The committee may not be aware that Diane was an intern in my office in 1965 when I was a Member of the House. Since then I sort of lost track of her. I knew she was here because her sister worked in my office.

During that time, from 1965 until just a few years ago, she had been making her own way in the Government and doing quite well. You, of course, have the information, but she has been very valuable to the Defense Supply Agency, ACTION, OMB, and the Department of Transportation and most recently served as Deputy of the National Highway Traffic Safety Administration.

So the record is clear and should be understood that she has a great deal of experience. She is not someone coming in with no experience. I think that is very important. Obviously, as Senator Lautenberg has indicated, safety should be everyone's first priority in all kinds of transportation, and I have indicated that to Diane and others in the Department of Transportation.

From the contacts I have there, it is my understanding that Diane does great work. If not, I will probably hear about it.

So I would like to have my statement made a part of the record.

[The statement follows:]

STATEMENT OF HON. BOB DOLE, U.S. SENATOR FROM KANSAS

Mr. Chairman it is a pleasure to be here today and introduce my good friend Diane Steed to the distinguished members of this committee. I am pleased to have this opportunity to speak on behalf of her nomination to be Administrator of the National Highway Traffic Safety Administration.

Mr. Chairman, Diane has already had an outstanding career in Federal service, which I am proud to say began in 1965 when she served as an intern in my office. Since then she has provided valuable service to the Defense Supply Agency, ACTION, OMB, and the Department of Transportation. Most recently she has served as Deputy Administrator of the National Highway Traffic Safety Administration.

In my opinion, Diane is precisely the type of individual we need to keep involved in the operations of Government. She is young, aggressive, innovative and successful. Her Federal career is marked with continuous upward progress, positive comments and a long list of awards and citations for outstanding service. She will bring to NHTSA a wealth of experience and a positive record of accomplishment.

Mr. Chairman, I happen to have fairly good contacts at the Department of Transportation, and I can assure the members of this Committee that Diane is well regarded and highly valued by that Department. I am confident she will do an outstanding job in her new position. It is with a great deal of home State pride that I

recommend to the Committee Ms. Diane K. Steed to be the Administrator of the National Highway Traffic Safety Administration.

Senator DANFORTH. Thank you very much.

Ms. Steed, do you have a comment?

Senator LAUTENBERG. You mean we do not get a chance to question Senator Dole?

Senator DOLE. Nancy said she would answer the questions.

Senator LAUTENBERG. I just want to know your secret source of information about transportation.

Senator DOLE. Thank you.

## STATEMENT OF DIANE K. STEED

Ms. STEED. Good morning, Mr. Chairman, Senator Lautenberg. I am very pleased to have this opportunity to be here today on my nomination as Administrator for the National Highway Traffic Safety Administration.

Should the Senate confirm my nomination, I look forward to working very closely with this committee and to receiving its advice and counsel on the most important national issue of automotive safety.

I think everybody by now knows that Secretary Dole's commitment to safety is very clear. I am extremely pleased that she has entrusted me with the responsibility to make motor vehicle transportation safer. In her view and in mine, we must approach highway safety problems with a three-part solution involving the vehicle and the roadway as well as the driver. I look forward to restoring a balance among these approaches, something that I believe the agency has lacked in the past.

What I would like to do, rather than just go through the statement, is highlight a few of the things that we have been doing in the last few months. I think it will give you a sense of the direction in which, if I am confirmed, the agency will be heading and then take any questions that you may have.

One of the important things that we are doing and one of the areas where I think we are beginning to see some improvements in safety is with the antidrunk driving efforts and the safety belt programs that we have had underway for the last couple of years.

We believe that both of these programs are among the factors that contributed to the decline in traffic fatalities in 1982. We believe that national awareness of drunk driving and recognition by the public of the need to use safety belts are part of the reason that those fatality rates dropped by 10 percent.

We are actively engaged in implementing the legislation that enacted last year on the alcohol incentive grant program. Nineteen States have applied for incentive grants under that program. Two have already been approved. One of those, in fact, meets not only the basic criteria but almost all of the supplemental criteria as well. We have reason to anticipate a number of other applications and a number of other approvals in the next few months.

Because of the grant program, in part, we are seeing an enormous amount of activity in the State legislatures with bills to strengthen drunk driving laws and enforcement efforts. Some 700 bills were introduced this year alone and 129 of those have already

been enacted. The intent of that law was a good one and it is being carried out by the States and very seriously by NHTSA.

Similarly, since our national safety belt program began we have seen usage rates begin to go up. This is very important because for every 1 percent we can increase belt usage, we prevent well over 100 fatalities and thousands of injuries.

Let me turn to the area of vehicle safety and vehicle design. This is an area where we are willing to take appropriate actions to regulate vehicle performance. As an example, we have just completed a rulemaking requiring center high-mounted stoplights on the rear of automobiles. We have also just competed rules requiring replaceable bulb headlamps and the international harmonization of lighting standards.

We will very soon be issuing a regulation on antilacerative coating on windshields which will also help reduce injuries to passengers and drivers.

We are continuing the new car assessment program where we compare crashworthiness performance of cars one against the other, and as a result of these tests we have seen some important improvements in automobile safety.

In fiscal year 1984, we will be able to provide the results of these tests to consumers even faster. In the past those results have been delayed until well into the model year because our test program has taken longer to complete than we have liked. We have changed those procedures. We have already begun the testing for fiscal year 1984 and think this will be an improvement for consumers as well.

One of my highest priorities is enforcement of the law which protects consumers from unreasonable risk of accidents, death or injury due to motor vehicle defects. In fiscal year 1983 there were 145 safety recall campaigns involving 3.6 million vehicles. Agency investigative efforts affected about 2.2 million of those vehicles. And in August of this year we had the most significant law enforcement action in the agency's history, seeking the recall of over one million vehicles with defective brakes.

We have also expanded the auto safety hotline to provide better and more consumer safety information to the public. We handled over 230,000 inquiries this year for recall and consumer information.

I will close by saying that I am very excited by the challenge and the opportunities presented us in highway safety. I have expressed to my staff that I think we have a once-in-a-lifetime opportunity right now with the tremendous leadership we are receiving from the Secretary in safety and with the growing public consciousness that auto safety is a very, very important issue facing the country.

In my 16 years of Federal service I have rarely seen a cadre of professionals more dedicated to their mission than the NHTSA staff with which I have had the great pleasure to work over the last 2 years. I am proud to have been nominated to serve as their Administrator.

If I am confirmed I look forward to working with them and with the Congress to faithfully execute our statutory mandate to safeguard human life on our streets and highways. I would take any questions that you have.

Senator DANFORTH. Thank you very much.

Senator Lautenberg.

Senator LAUTENBERG. Very good statement, Ms. Steed. Again, we look forward to quick confirmation, hopefully, and your service there.

Because some of these rules and regulations are fairly new for me and you have served in the Federal Government a lot longer than I have, the question may be rather elementary.

What happens when the Department issues a regulation? How does it get carried out and who enforces those standards?

Ms. STEED. We carry out the regulation. We issue the safety standards and regulation, taking into account leadtime questions. For example, we issued the high-mounted stoplight regulation a couple of weeks ago. It will take effect in model year 1986.

Then when new models come out, we test for compliance randomly. We buy a car off a dealership lot and test it for compliance with specific standards.

Senator LAUTENBERG. But ultimately does it fall to the States to enforce the standard? Is that the process?

Ms. STEED. No. Essentially, vehicle design standards are our responsibility. We will test for compliance. If there is a defect and we find it through the compliance process, we will start the recall process.

Senator LAUTENBERG. You focused somewhat on the issue of drunk driving. We have had many discussions here about it and it certainly concerns the chairman and me, as well as our colleagues.

The statistics are devastating. New Jersey is in a particularly funny place because though we have now a minimum drinking age of 21, our neighbor to the north, New York State, has the lowered age, and it is a problem. We find that the youngsters go across the border, drink and come back, often intoxicated and subject to fatal accidents. It is a terrible thing to witness.

There seem to be a number of ways to get a uniform standard, and, if you would not mind—we talked about this informally yesterday—I would like a restatement from you here for the record on what we can do to insure a uniform age, a uniform higher age, through the country and how you would try to implement that process.

Ms. STEED. Certainly. We know from past experience and from the research we have done, that raising the drinking age does have a tremendous effect on fatalities. The figures we have show that when States raise the drinking age we have seen a 28 percent drop in fatalities for young people. So it is an effective tool.

I think the way that we are pursuing changes in the drinking age now is proper—that is, that we are working very hard with individual States and with groups throughout society to encourage States to raise the drinking age to 21.

When the Congress passed the alcohol incentive grant legislation last year, it gave us four basic criteria States must meet to receive extra highway safety funds to combat drunk driving. It then directed the agency to issue regulations and standards for supplemental criteria which the States should meet.

The very first of those supplemental criteria is raising the minimum drinking age of 21. We have seen progress in this area. Just last year, seven States raised the drinking age, not all to 21, some

took gradual steps, but they are moving in the right direction. Three States did raise it to 21. Next year, the 21 drinking age is on the legislative calendar in 14 others.

So we think that by working hand-in-hand with the States, encouraging them, providing incentives, providing them all the technical assistance we possibly can we are going to see the States act to raise the legal drinking age to 21.

Senator LAUTENBERG. You come to NHTSA from a position with OMB as Chief of Regulatory Policy. What are the differences in perspective of public policy in the area of auto safety in your present position as compared to your experience at OMB?

Ms. STEED. I guess I would have to say night and day. OMB has an appropriate role to play as an oversight group for the Government as a whole, to examine whether or not regulations are cost-effective. That is the role that we played for several years at OMB.

As a matter of fact, I helped write the rules as to what the OMB would be looking at when they examined agency regulations. On the other hand, I believe the agency has a different mission. We are entrusted by the Congress with responsibility for safety, which must be our first and foremost concern.

We must also look to see that regulations are responsible and necessary, but safety must be and is our first and foremost concern.

Senator LAUTENBERG. I have nothing further, Mr. Chairman.

Senator DANFORTH. Thank you, Senator Lautenberg.

Ms. Steed, last month the Department of Transportation announced that a rulemaking was going to be instituted on the question of passive restraints. As I understand the situation, between now and April there is going to be a very comprehensive study of passive restraints—airbags, seat belts; how they work mechanically; whether they do the job; what the safety effects are; whether they themselves are safe; what the cost would be; whether or not they are prohibitively expensive and so on; what the difficulties would be of putting them in automobiles.

Have I accurately stated the situation?

Ms. STEED. Yes. I would not call it a study, Senator. I would call it the rulemaking process to gather up-to-date, current information. We already know a lot about how these things work.

Senator DANFORTH. And this gathering of information is to be completed by April unless there is an extension of time until July. But in any event—is there a specific date in July?

Ms. STEED. I think it is the ninth, but I would have to go back and look at the specific date.

Senator DANFORTH. But there is some date in July which is the final date?

Ms. STEED. That is right.

Senator DANFORTH. Beyond which there is no other final date, is that right?

Ms. STEED. That is correct.

Senator DANFORTH. Let me share with you what my concern is on studies or gathering of information or however you want to call them.

My concern is that the term "to study" is used frequently in the Senate meaning to not do anything. We often say if we are managing a bill on the floor, if somebody offers an amendment, we will

say well, we will have a study or hearing, and that oftentimes is a euphemism for meaning we will drag our feet and we will not do anything at all.

I take it that when the Department of Transportation and the administration says that it wants to gather information and have a rulemaking it means that. Is that correct? Or is the more cynical view of study or information-gathering more appropriate?

Ms. STEED. It is definitely not intended as a delay. I know that recent new reports have indicated that that is exactly what the Department was trying to do. I can assure you that is not the case.

We took the mandate from the Supreme Court very seriously. What the Supreme Court basically said to us was you did not do it correctly last time. You did not act correctly in rescinding the standard. There are things that you did not take into consideration in the rulemaking, and that is what this new rulemaking is intended to do—to go back and consider things that the Supreme Court called to our attention as well as other options that face us as decisionmakers.

As I said, we have a 14-year history with this regulation. The question of whether or not safety belts work or whether or not airbags work really is not the question before us. The question is how best to provide the safest devices in a car to protect passengers.

Senator DANFORTH. You assume that airbags work?

Ms. STEED. Yes; I do.

Senator DANFORTH. And that they do not maldeploy and when people state that they are very frightened that an airbag will just explode in their car, you assume that that is not a well-founded fear?

Ms. STEED. From everything I know about them, that is correct. I do not assume that those are well founded fears.

Senator DANFORTH. And you also assume, as has been stated by NHTSA in the past, that in the neighborhood of 8,500 to 9,000 lives a year would be saved if airbags were placed in the cars?

Ms. STEED. That is our best figure and that is one of the things on which we want current information from people—whether or not those estimates that we have previously promulgated are correct.

Senator LAUTENBERG. Excuse me, Mr. Chairman, just a point of information.

That would be if all the cars on the road were equipped with airbags? You are not talking about new cars exclusively for the next couple of years to get that kind of statistic?

Ms. STEED. That is correct.

Senator DANFORTH. Now as you have pointed out we have been having studies since 1969. Fourteen years of studies is an awful lot of studies. We have had some 10,000 to 12,000 automobiles that have been on the road with airbags in the cars. Let me share with you what my concern is and ask you if you can relieve my concern.

My concern is that we will go through yet another period of study and that at the end of that period of time, whether it is April or July, we will have something. But that in another 10 months, 12 months—whatever—it will be suggested that what we really need to do is have another study and that all of the information is not in, and that we really do not know the story on passive restraints.

What I would like to be reassured of is that by the date in July—I mean, just not even assuming April will be met, but by this date in July—will we have studied the matter to death? Will we have exhaustively gone into the question of passive restraints? Will NHTSA have left no stone unturned to find out everything there is to know that is relevant about passive restraints?

Will this be a good study, a thorough study, an exhaustive study? Will this be a definitive study? Will this be a study so that at the end of this period of time at last we will be able to say that no more studies are really necessary, that we know all the facts, that all of the information is in, and that the time has come to make a decision?

Will we be able to say as of next July that anybody who suggests further studies is procrastinating?

Ms. STEED. I certainly hope so, Senator. That really is one of my goals, is to settle this question once and for all. That is one of the reasons that we have set forth the options in the rulemaking in order to consider all sides of the question, to go through the issues thoroughly, to hold public hearings not only in Washington but across the country, to do some public opinion polling and settle this question one way or the other once and for all, considering all of the things that the Supreme Court told us we had not considered before.

Senator DANFORTH. Well, I know you hope so, but can you give me a better assurance than that? Can you tell me that this is going to be such a well done study, that it is going to be so exhaustively performed that when it is all over we will have confidence that NHTSA has done an absolutely first-rate job and that all that there is to know is known and that we will not have to then proceed on yet more studies?

Ms. STEED. I can guarantee you, as I have guaranteed the Secretary, NHTSA will have done an absolutely first-rate job. This question is so controversial that I am sure whatever the decision is the agency will be sued given the rule's history, and I cannot guarantee you what the courts will do.

Senator DANFORTH. I am sure it will be a controversy, but I am not asking about the controversy or about the policy decision or about the judgment at the end. I am only asking about the gathering of information, the knowledge, the facts, the technical knowledge, the economic analysis—everything and anything that has to go into a gathering of facts and a gathering of information.

What I would like to know is, at the end of this period of time, by next July, can we have as a matter of certainty confidence that all of the facts are in, all of the information is in, all of the evidence has been presented to the jury and now it is simply a matter of making the policy decision?

Ms. STEED. I can assure you we will know all that it is humanly possible to know about the subject.

Senator DANFORTH. Thank you.

Does the administration, in your view, have a preconceived idea as to the result of the study?

Ms. STEED. No, sir. I do not believe that is the case. As I said before, I think if we gather the information, put the facts forward

and make a case, no matter which way the decision comes out, I do not believe there is a preconceived notion.

Senator DANFORTH. In other words, you believe that given the facts and the evidence the administration will then be in a position to make its best judgment on the merits without having a preconceived ideological decision that has been made?

Ms. STEED. I think there are some concerns, but I again will say that I think if we can make the case on the merits that we will not be turned down.

Senator DANFORTH. Let me say—and I told you this months ago when you were first nominated or the first suggestion was made by the administration that you would be undertaking this important job—that at the time I was considering opposing your nomination and your confirmation, not because I had anything at all against you or any doubts about your ability, but simply because I am so concerned about the performance of the administration on matters of highway safety and that I saw your confirmation as being one way of just expressing a sense of real indignation.

But on reflection I have decided against that, and I have decided against it, first, because I do not have any doubts about your qualifications as a person and, second, I do not think NHTSA is where the problem is. I think the problem is in the White House and I think that the problem is in OMB.

I think that the administration has formed a very rigid position on passive restraints, not the Department of Transportation, but the White House and the Office of Management and Budget has essentially taken the position: Do not bother us with the facts; we have already made up our minds.

The one thing that is an absolute no is airbags. It does not matter what the facts are, does not matter how many lives are saved, does not matter the cost-effectiveness of them. We are not interested in the real cost-benefit analysis. We are not interested in safety. We are primarily interested in saying no to airbags.

Now do you believe that the question of airbags is a lost cause in this administration? Do you believe that the position of the administration—that is to say, the President and Director Stockman—will be no, regardless of what findings are made or what facts are elucidated by NHTSA during this period of study?

Ms. STEED. Senator, if I believed that, I would have to say I would be crazy to be seeking this job today because I do not like beating my head against the wall any more than anyone else does. I honestly believe that if we do the thorough job that you have asked me if we will do, and whatever the facts of the situation are, I believe we can present those to the White House.

We will have to make our case one way or the other, to the White House, to the public, and to the courts, and I intend to conduct as tight and as thorough a rulemaking as possible, in order to assure that the case is made and that the facts are there, wherever they may lead us.

Senator DANFORTH. Do you yourself have any preconceived idea as to where they are going to lead?

Ms. STEED. No, sir, I do not.

Senator DANFORTH. Do you yourself have an open mind as to what we should be doing with respect to passive restraints?

Ms. STEED. Yes, sir, very much. Even though we have a 14-year history and even though we went through it 2 years ago, I have not myself been through the entire record and I am open to learning a number of things. I am anxious to get the new information and to make a fresh, new decision.

Senator DANFORTH. Have you ruled out the possibility that mandatory airbags might be the best way to approach this problem?

Ms. STEED. I have ruled out no alternative at this point, Senator.

Senator DANFORTH. You are open to be persuaded by the evidence, by the facts that are presented in the study?

Ms. STEED. Yes, sir.

Senator DANFORTH. That airbags on a mandatory basis may be the way to proceed?

Ms. STEED. If the facts in the case are there, I have not ruled out any alternative.

Senator DANFORTH. Do you have a ideological bias against airbags or is your mind truly open?

Ms. STEED. I would have to say it is very much open.

Senator DANFORTH. So in your own mind you have not said even tentatively no to airbags?

Ms. STEED. That is correct.

Senator DANFORTH. And you have not said even tentatively no to airbags on a mandatory basis?

Ms. STEED. I could not have recommended the current rulemaking that we put before the Secretary to sign if I had made up my mind against one of those alternatives.

Senator DANFORTH. Now short of making up your mind there can be kind of a leaning against one approach or another—not an absolutely predetermined end result but a basic bias. Do you have any bias or any leanings one way or the other on the question of airbags?

Ms. STEED. No, sir. I have tried very hard to remain absolutely neutral.

Senator DANFORTH. And you are, in your own mind?

Ms. STEED. Yes, sir.

Senator DANFORTH. Now if it is your belief that the President of the United States has a very strong ideological position against airbags and if that strong position is conveyed to you, will you be able to maintain your objectivity?

Ms. STEED. Yes, sir. I have to be able to do that or I would not be seeking the job.

Senator DANFORTH. And if Mr. Stockman or anyone else in OMB were to call you and say to you, Diane Steed, the one thing that this administration absolutely cannot agree to is airbags—we would rather die than agree to an airbag standard and we cannot have it and we do not want it, we will not approve airbags—would you consider or would you continue to call them as you see them with respect to airbags and passive restraints?

Ms. STEED. As a regulator entrusted with a statutory mandate to save lives, I would have to call it as I see it on the merits and on the facts.

Senator DANFORTH. And, therefore, come April or July you will state your position in an unbiased and unvarnished fashion, re-

gardless of any position taken by the President of the United States on his views on the matter?

Ms. STEED. I have to present the facts as they unfold.

Senator DANFORTH. And you will present those facts to whom?

Ms. STEED. To the Secretary, who will be the final decisionmaker, and then we will present the facts to the OMB, who reviews all of our regulations.

Senator DANFORTH. Would you also present them to this committee?

Ms. STEED. Certainly.

Senator DANFORTH. OK. Even if your views are different from those of the President?

Ms. STEED. I think what we will have to do is bring forth a regulation, submit it to OMB and explain our case and the rationale for why we chose——

Senator Danforth. In other words, your position before it even goes to OMB will be known to the public?

Ms. STEED. Before it goes to OMB?

Senator DANFORTH. Yes.

Ms. STEED. Generally not. Generally we do not release a position until OMB has reviewed it.

Senator DANFORTH. What I am saying is this: How do we know if we have gone through this elaborate process of study and analysis and you have come up with your best judgment, and all of the facts to support that judgment, and you go up and present a packet of information to David Stockman, for example, and he does not even open it? He says forget it or the President says I do not care if you have been studying this for 15 years or whatever, forget it, I rule it out?

How would we know that your decision and your analysis and your best open-minded judgment had been for airbags under that circumstance and that it had just been summarily dismissed by the administration?

Ms. STEED. Well, considering that about 3 weeks ago I opened up the Washington Post and read the contents of the high-mounted stoplight regulation before it had come out of OMB, I am sure that it is going to be evident where everyone stands on the issue as it unfolds.

Senator DANFORTH. Do you believe that it is a matter of personal principle to conduct a fair and objective analysis of the facts on passive restraints without any preconceived idea on your own part and then, having reached the best evidence, having formed the best evidence and the best judgment, to fight for that as hard as you can fight for it?

Ms. STEED. You bet.

Senator DANFORTH. All of us in the President's party want to agree with the President and none of us want to be troublemakers. I mean, there are people who do. There are people within the executive branch, people in the Congress of the President's party who like to clobber him all the time, but most of us—and I am sure you are one of them—want him to succeed and want to agree with the President, and we want to be team players if we possibly can.

But there are times when matters of principle have to override any sense of team play, and my own view is that when 9,000 lives a year are involved that is the overriding principle.

If you believed on the basis of the evidence that a certain course should be followed with respect to passive restraints, if that were your best judgment, and if that position were dismissed not on the basis of evidence or on the basis of safety but on the basis of presupposition and ideology, would you be willing to resign as a matter of principle?

Ms. STEED. I hope I do not face that situation.

Senator DANFORTH. I know you do.

Ms. STEED. And I guess I really could not say honestly today what I would do unless I were actually faced with that situation.

But what I can tell you is that I believe, as you do, that of course we are here to see the President succeed. I also believe very strongly that he does not appoint people simply to have them there to agree with him. He appoints people to carry out a statutory responsibility.

As a matter of fact, I have seen very few occasions where agencies and OMB agreed automatically. There is a lot of battling back and forth for a policy position and good reasons for those positions. I can assure you that that is what I intend to do.

Whether or not I would resign, that is a tough question for me to answer today because I am not faced with that situation. I could sit here and say sure but——

Senator DANFORTH. What I am positing to you is not that there is a reasonable argument. What I am posing to you is that the study has been made. You have formed an opinion based on the evidence presented and you are convinced that regardless of the evidence and regardless of the strength of the arguments your position has been summarily dismissed by the administration without really so much as a by-your-leave.

Ms. STEED. Without looking at it at all?

Senator DANFORTH. Without a fair look at the merits.

Ms. STEED. I am not sure I could work for anyone under those circumstances.

Senator DANFORTH. I beg your pardon?

Ms. STEED. I am not sure I could work for anyone under those circumstances.

Senator DANFORTH. I just want to say one thing in conclusion, and that is that I think you have an opportunity and a responsibility which rarely happens to anybody, ever—that you, Diane Steed, have an opportunity and, therefore, a responsibility to save not just a few lives but thousands of them. That is a very awesome responsibility, and how you do that really is a matter of conscience with anybody.

I am pleased to support you and I have great trust in you. I am looking to you to do what is right.

Do you have any more questions?

Senator LAUTENBERG. Yes, thank you, Mr. Chairman.

This hearing has been very helpful to me, Jack, for a couple of reasons. One is to hear from our nominee, and the other is to hear your statements as chairman. We have worked together on a couple of major issues and I have to say that I am impressed by

your commitment to what is right, overriding partisan issues or other interests, and I respect you greatly and I am delighted to serve with you not only in this hearing but otherwise.

You feel very deeply about the same things that I feel about, and that is whenever we can prevent needless loss of life, injury, maiming of young people unnecessarily it is our responsibility to do that, and I am pleased to hear you take such a forthright and such a passionate position on it.

The questioning was also of great interest to me because I would say that you almost zeroed in on the subject, that there was not a lot of room for doubt. I was looking for additional adjectives to throw in, but I think you used them all.

But it brings up a question from me, Ms Steed. Though I was quick to endorse your professional background and sense of right that I got from our previous discussion and listening to you here today, you made a speech in September—it was before the National Passenger Traffic Association, September 1982—and I quote you here when you talk about picking initial targets for regulatory reform and choosing the regulations that were targeted for review.

And you say "they were things that ranged from problems with exploding automobile batteries"—and it goes on—"to things like bumper regulation, which is an economic standard, to the infamous passive restraint standing, better known as the airbag, standard."

Now when Chairman Danforth asked you those questions you declared a no bias view, an objective view certainly, and that terminology—"the infamous passive restraint"—does not sound like it is without prejudice. I wish you would explain that here, please.

Ms. STEED. I do not know of another regulation in the Federal Government that has had a 14-year history and over which people are more polarized than this one. As we discussed regulations when I was at OMB, everyone would always bring up the infamous airbag regulation. This has probably had the longest history of any regulation of which I am aware and that is what I meant by infamous.

Senator LAUTENBERG. So you are using the vernacular of the day as opposed to your personal view on the passive restraint?

Ms. STEED. That is right.

Senator LAUTENBERG. If you could in short form for me describe what you think the problems are—we have been through the economic issues. I have a letter in front of me from the commissioner of insurance in New Jersey writing about a statement made by the superintendent of insurance in New York State and the savings that might be achieved as a result of the use of airbags and restraints.

So there is economic justification for the use of these in addition to the more important, overriding issue—that is, the saving of lives or personal safety. What is it? What is the factor out there? Senator Danforth went through the present administration's view, but this transcends administrations, obviously. It goes back through 14 years of study and review.

What is it, in your view, that keeps this from becoming a part of our driving lives? What would you describe as the single greatest factor? What are the opposing forces?

Ms. STEED. I think the real problem is that it has become so much of an emotional issue—almost a flag and motherhood issue.

What concerns me is I want to deal in facts, not in the polarized positions that are so often batted back and forth when we look at this regulation. There are about three things that I think we need to know.

We obviously know that passive restraints work—both kinds, airbags and passive belts. We need to know the most current information about the actual performance of those devices on the road and, for example, the last time we considered this regulation in 1981 we had, I think, about six fatalities in airbag cars.

We now have 10. We want to look very carefully, in depth at those accidents and see what happened—why they were caused, how the airbag performed. That is not something that we were able to do before.

I think another question that is always raised is cost. The agency will look at the estimates and talk with the manufacturers and others about them. The agency can tear down studies and we have now done that since the last time we looked at the regulation.

I think the final important factor is public acceptability. Senator Danforth asked a question about whether or not unnecessary deployments or blowing up in peoples faces is a problem. To the best of my knowledge, it is not, and I have gone through the question very thoroughly.

The public does not necessarily know that, and I think public acceptability is a very big piece of this question because the public is very ingenious. Unless they understand passive belts, how they work, why they are important, unless they understand airbags, how they work, how they are intended to work, why they do work, the history of the 12,000 air bag equipped cars on the road, it concerns me that we are not going to know what the public will do.

I am concerned about their reaction unless they do understand these devices and are ready for them. That is the kind of information that I as a decisionmaker will need to gather. It is the kind of information we hope to pull out in the public hearings and in the public opinion poll we intend to do.

Senator LAUTENBERG. I am advised that some of those fatalities in airbag-equipped cars resulted from drownings and also from the total demolition of the automobile in which nothing would have been able to save the vehicle passenger.

But I am concerned just a little bit about the fact that you go back to reviewing the facts when it seems to me that after this length of study and Senator Danforth's comments about the overuse of the study process, is the evidence not now overwhelming that these things work to support the statistic that 9,000 lives a year could be saved as a result of the use of the safety features?

Therefore, are we not at a point in time when the study is complete? You say the report will be out finally, as far as you are concerned, the latest July? Do I understand that?

So that even though you are interested in further study, I assume that contrary to the point of view that Senator Danforth was trying to extract—and that is that you have no bias against—is it fair to say that you have a bias for based on the information you have gotten to this point?

Ms. STEED. I have to agree that the technology works. I have been in a car where an airbag was deployed. I had wanted to have the personal experience and sat in a car when the airbag was set off—not on a slow demonstrator model but a production model was exploded for me in a car. We were not in a wreck, fortunately.

I have had the opportunity to try all kinds of passive restraints and I do believe they work. I would not be willing at this point and cannot as a decisionmaker to indicate a bias one way or the other as to the outcome of the regulation, but I will say that I do believe the technology works.

Senator LAUTENBERG. Thank you very much. Thank you, Mr. Chairman.

Senator DANFORTH. Thank you very much, Ms. Steed. We appreciate your being here.

Ms. STEED. Thank you, Senator.

[The statement, biographical sketch, and answers to questions of the committee follow:]

STATEMENT OF DIANE K. STEED

Mr. Chairman and distinguished members of the committee, I am very pleased to have the opportunity to appear before you on my nomination to be Administrator of the National Highway Traffic Safety Administration. Should the Senate confirm my nomination, I look forward to working very closely with the committee and to receiving its advice and counsel on the most important national issue of auto safety.

Secretary Dole's commitment to safety is clear. I am pleased that she has entrusted me with the responsibility to make motor vehicle transportation safer. In her view, and in mine, we must approach highway safety problems with a three-part solution involving the vehicle and the roadway as well as the driver. I look forward to restoring a balance among these approaches—something the agency has lacked in the past.

As you know, for the past two years, I have served as the NHTSA Deputy Administrator. During most of this period I was responsible for the day-to-day management of the agency with particular emphasis on the State and Community Highway Safety Grant program. In more recent months as the Acting Administrator, I have focused my attention on NHTSA rulemaking, research, law enforcement and safety planning efforts. In this context I would like to sketch out for the committee a brief state of the agency as of the past few months and then focus on the important auto safety issues with which the agency must deal in both the near and long term.

During the past year, nationwide programs to combat the drunk driving problem and the low level of safety belt usage in this country have begun to show positive results. Among the major factors that we believe contributed to the decline in 1982 traffic fatalities—43,721 in 1982 compared to 49,218 in 1981—are measures taken to increase national awareness of the drunk driving problem, recognition of the need to use safety belts, and an enhanced public resolve to confront and deal with these problems.

Last year, Congress enacted legislation to encourage the States to improve their control of drunk driving. Public Law 97-364 established a new grant program under which the States would become eligible for increased funds for alcohol programs if they met certain criteria. We are encouraged by the efforts that many States have made to improve their programs in order to qualify for grants. Nineteen states have applied for grants under our Alcohol Safety Incentives Grants program. We expect to receive more applications over the next several months. Moreover, in 1983 in state legislative sessions some 700 bills were introduced to strengthen various aspects of the States' Driving While Intoxicated laws. One hundred and twenty nine of them were passed.

Similarly, since our safety belt program began, national usage has begun to increase. This is important because every percent increase in belt usage results in preventing well over 100 fatalities and thousands of injuries.

In restoring a balanced approach to highway safety, we are also willing to take actions to regulate vehicle performance, where appropriate. For example, we have completed the rulemaking on center high mounted stoplights—the first rule requiring new safety hardware issued in several years. We also recently completed rules

permitting replaceable bulb headlamps and the international harmonization of lighting standards. We expect shortly to issue a rule permitting the use of an antilacerative coating on windshields which will help reduce injuries to drivers and passengers. We have published evaluations of safety standards concerning dual master cylinders and disc brakes (FMVSS 105), side marker lamps (FMVSS 108), fuel system integrity (FMVSS 301) and side door beams (FMVSS 214).

This year the agency published a new safety priorities plan, "Planning for Safety Priorities" as well as a report on "The Economic Cost to Society of Motor Vehicle Accidents." I intend to use the safety plan as the basis for the allocation of our resources and to update the plan regularly to accommodate changing priorities.

In the New Car Assessment Program, thirty additional frontal and frontal oblique impact tests were conducted in fiscal year 1983. One hundred and twenty three make/models have been tested since 1979. As a result of these tests there have been improvements both in vehicles and test procedures. Starting in fiscal year 1984 we will be able to provide the results of these tests to consumers earlier in the model year than we could previously. We have also begun to provide this information in language and in a format more useful to consumers. This year the first phase of a program to better understand the repeatability and reproducibility of the 35 mph front barrier impact test was completed.

One of my highest priorities is the enforcement of the law which protects consumers from an unreasonable risk of accidents, death or injury due to motor vehicle defects. In fiscal year 1983 there were 145 safety recall campaigns involving 3.676 million vehicles. Agency investigative efforts affected 2.235 million of these vehicles. In August of this year we filed one of the most significant law enforcement actions in the agency's history, seeking the recall of over one million vehicles with defective brakes.

The Auto Safety Hotline was expanded to provide more consumer safety information to the public. In fiscal year 1983, we handled over 230,000 requests for recall and consumer information and reports of defective vehicles.

I am excited by the challenges and opportunities facing the agency in the months ahead. In my sixteen years of Federal service, I have rarely seen a cadre of professionals more dedicated to their mission than the NHTSA staff. I have had the pleasure to work with the NHTSA staff for two years, and I am proud to have been nominated to serve as their Administrator. If I am confirmed, I look forward to working with them and the Congress to faithfully execute our statutory mandate to safeguard human life on our nation's streets and highways.

I will be pleased to try to answer any questions.

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### Biographical Sketch of Diane Kay Steed

Address: 3100 Connecticut Ave., NW Apt. 331, Washington, D.C. 20008.

Date and place of birth: Hutchinson, Kansas DOB: November 29, 1945.

Marital status: Single.

Education: Hutchinson High School 1961-1963, Hutchinson Junior College 1963-1964, University of Kansas 1964-1967, BS Degree in Education (English, Journalism, and Political Science), George Washington University 1967-1972, and Post Graduate Work in Management Science.

Employment record: Congressional intern—Congressman Robert Dole (Ks.) 1965, Management Intern—Defense Supply Agency, 1967-68, Management Analyst—Defense Contract Administration Services and Defense Supply Agency, 1968-72, Senior Budget Analyst—ACTION, 1972-73, Management Associate—Economics and Government Division and Office of Management and Budget, 1973-78, Chief, Regulatory Policy—Office of Management and Budget, 1978-81, Deputy Administrator—National Highway Traffic Safety Administration and Department of Transportation, 1981 to Present.

Government experience: See above.

Memberships: Alpha Phi Fraternity, Senior Executive Association, Executive Women in Government, and National Association of Women's Highway Safety Leaders (Hon. Member).

Political affiliations: Registered Republican, State of Virginia, 1967-1976 and Registered Republican, District of Columbia, 1976 to Present.

Honors and awards: Top Ten DSA Personnel, 1970, Outstanding Performance Ratings—1970, 1971, 1975, 1976, 1977, 1980, 1981, 1982; Meritorious Executive Award (Presidential Rank)—1981; VFW—Certificate of Appreciation 1983; National Association of Women Highway Safety Leaders—Honorary Membership 1983.

Published writings: article in Clubwoman Magazine (General Federation of Women's Clubs), October 1982; Article in Police Chief Magazine (International Association of Chiefs of Police), July 1983; "The Challenge of Regulatory Reform," A Report to the President from the Domestic Council Review Group on Regulatory Reform, January 1977 (co-author); and "Improving Government Regulations, A Progress Report" September 1979 (co-author).

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QUESTIONS OF THE MAJORITY AND THE ANSWERS THERETO

*Question 1.* Earlier this month, the Department of Transportation issued its Notice of Proposed Rulemaking (NPRM) on the Occupant Crash Protection Standard, pursuant to the Supreme Court's ruling on this matter. Given that this issue has been studied by the government for at least 14 years and has been the subject of extensive rulemaking activity, why did the Department believe it necessary to issue an NPRM seeking comments on issues already thoroughly studied and explored? Why couldn't the Department simply issue an NPRM setting forth an implementation schedule for an automatic restraint standard?

Answer. The only question answered by the Supreme Court's ruling was the narrow one of whether the automatic restraint requirement could be rescinded on the basis of the information and rationale offered by the National Highway Traffic Safety Administration in 1981. It left open the broader question of relative merits of the various alternative actions which the Department could take to promote occupant crash protection. The recent NPRM is intended to obtain the latest views and data of all interested persons on reasonable and effective ways of providing that protection. After the close of the comment period, the Department intends to move swiftly to a final decision in accordance with the schedule set out in the NPRM.

*Question 2.* Legislation to combat the growing problem of automobile theft has been introduced in both Houses of Congress. What NHTSA's position on automobile component parts labeling, stricter penalties, and tighter export controls as ways to solve this problem?

Answer. Motor vehicle theft is a serious, expensive problem for consumers. Law enforcement experts tell us that motor vehicle theft costs our economy about $4 billion annually, and that this sum does not include the lost time and inconvenience experienced by a car owner whose vehicle has been stolen.

S. 1400 seeks to reduce auto theft by requiring the Secretary of Transportation to issue standards relating to the identification of vehicle parts and components and by strengthening the Federal criminal laws as they pertain to motor vehicle theft. As it is currently drafted, however, the bill would seek to accomplish these goals through an amendment to the National Traffic and Motor Vehicle Safety Act of 1966 and, thereby, has a serious potential to compromise auto safety and the National Highway traffic Safety Administration's (NHTSA) safety mission. For this reason, and related reasons discussed below, we oppose the bill in its current form.

The Motor Vehicle Theft Law Enforcement Act would amend the Safety Act by adding a new category of standards to be called "security standards", and would require manufacturers to recall motor vehicles for "security defects." We are deeply concerned that this would dilute the meaning of the safety defect recalls in the minds of consumers. The term "security defect" is not defined in the bill and, in the context of the entire legislation, it is reasonable to assume that the legislative intent is quite broad.

We are also concerned that creating an entire new category of regulatory authority (the "security standard") which would be linked, for enforcement purposes, to safety standards, is both unnecessary and unwise. The enforcement provisions associated with safety standards are deliberately more stringent than those associated with NHTSA's consumer regulations in order to impress upon vehicle manufacturers the serious obligation they have to comply with safety standards. Without belittling the importance of theft prevention, we question whether Congress intends to signal to the regulated industry that a non-safety regulation is as critical as the industry's safety obligations to the American public.

We have a related concern about the unnecessary breadth of the proposed regulatory authority. While the proponents of this legislation have urged its enactment on the basis of one new requirement (i.e., marking components of motor vehicles), the bill would create a broad, new authority to issue an unlimited number of "security" standards. Indeed, the language of the bill clearly contemplates more than one such standard because it refers to the new standards in the plural form. Last year, in testimony in the House of Representatives, we opposed the bill for these reasons,

citing also our concern about directing our scarce resources away from our safety mission.

The House Subcommittee on Telecommunications, Consumer Protection and Finance has reported a bill that is somewhat different from S. 1400. We are still analyzing the new language, and do not have a position as yet. I might note, however, that the Administration's formal objections to S. 1400 did not deal with the portions of the bill covering stricter penalties or tighter export controls. As these issues are outside the scope of NHISA's jurisdiction, we would defer to the Department of Justice on these points.

*Question 3.* What is your opinion of the 55 mph speed limit in terms of life and injury saving potential? Does NHTSA have any ongoing monitoring programs to ensure that States are enforcing the 55 mph nationwide speed limit?

Answer. There is strong evidence that the slower speeds which resulted from imposition of the 55 mph national maximum speed limit have produced significant safety benefits in terms of reductions in motor vehicle fatalities and injury severity. Our estimates place the lifesaving potential of the law at 6–7,000 lives per year. However, because other safety improvements were being implemented during the same time period, there is still considerable disagreement among highway safety experts as to the precise magnitude of the safety gains solely attributable to the 55 mph speed limit.

The speed limit makes sense in congested and densely populated areas. I can understand, however, that the 55 mph limit might be viewed as too low for areas less populated, especially in the west. As a general rule, I believe that State and local governments should have the authority to establish their own maximum speed limits. However, should Congress decide to repeal the 55 mph limit, I would urge the States to carefully review the benefits of the 55 mph speed limit when exercising such speed limit authority.

Under the provisions of the recently enacted Surface Transportation Assistance Act of 1982 (P.L. 97–424, January 6, 1983), the Secretary of Transportation has arranged with the National Academy of Sciences for a comprehensive study and investigation of the benefits, both human and economic, of lowered speed due to enactment of the 55 mph limit (with particular attention to savings to the taxpayers and whether the laws of each State constitute a substantial deterrent to violations of the 55 mph limit). The results of this study, together with recommendations, will b submitted to the Secretary and to the Congress during 1984. I can assure you that I will carefully review the conclusions and recommendations contained in that study.

Under the provisions of various Federal statutes and DOT regulations, each State is required to annually certify to the Secretary of Transportation that the State is enforcing a 55 mph maximum speed limit. The State certification must be supported by State enforcement and speed monitoring data collected in accordance with detailed DOT regulations. The specifics of speed monitoring are primarily the responsibility of the Federal Highway Administration. However, the results are reviewed periodically by NHTSA staff. The statutes and implementing DOT regulations prescribe strong Federal-aid highway funding sanctions against States which fail to comply with 55 mph enforcement and speed monitoring requirements. NHTSA tracks State expenditures for 55 enforcement and works with the States to ensure that Congressional intent is carried out.

*Question 4.* In your testimony before the Surface Transportation Subcommittee on oversight of NHTSA, you stated that NHTSA had found that 5 mph bumpers did not yield the greatest net economic benefit to consumers and that reducing the standard to 2.5 mph would not adversely affect safety, thus NHTSA rolled back the standard. However, NHTSA [is] continuing "full scale" evaluation of the standard, at a cost of $1 million. Why didn't NHTSA do more extensive evaluation before rolling back the standard? Why is this additional evaluation being undertaken?

Answer. NHTSA's current "full scale" evaluation of the bumper standard is not an initiation of such an evaluation, but rather a continuing one. During the period 1977 to 1980, NHTSA spent $875,000, exclusive of staff time, in obtaining data which led to its 1981 evaluation report on the benefits and costs of 5 mph bumpers. This prior evaluation was the most thorough and expensive of all such evaluation efforts. It involved cost and weight data from nearly 100 different bumper systems, insurance reported accident data from 65,000 accidents, and a survey of more than 12,000 households to obtain data on vehicle damage which is not reported to insurance companies. In addition, $350,000 was spent in 1979 on crash tests of existing 5 mph and modified (with brackets replacing energy absorbers) bumpers.

Our present efforts will result in the same types of data being obtained for the current 2.5 mph systems to enable us to determine whether they are, in the real world, more cost effective than 5 mph bumpers. The language of the statute re-

quires us to do this sort of continual evaluation of our bumper rulemaking actions. We have already contracted to obtain data on the costs and weights of model year 1982 (5 mph) and 1983 (5 mph and 2.5 mph) bumper systems and to obtain insurance company data on 1981–1982 cars. Insurance data for model year 1983 vehicles, cost and weight data on model year 1984 vehicles, and accident data on nonreported accidents will also be under contract within the next few months (note that insurance data is a year behind as we need a year's field experience before that data can be used).

*Question 5.* Considerable research has shown that the current steering wheel design is a major safety hazard for truck drivers. Is any action forthcoming from NHTSA in this area in the near future?

Answer. In 1980, NHTSA began research to identify the principal contributing factors to heavy truck occupant fatalities, as well as potential ways of preventing those fatalities. The project identified ejection, rollover and entrapment, and contact with the steering wheel as being the primary mechanisms resulting in truck driver fatalities.

The agency has extensively studied the problem and has determined that increasingly seat belt usage is the single most effective means of reducing truck occupant injury. Current usage rates are approximately 6 percent. Lack of comfort and convenience have been cited as primary reasons for non-use of belts in these vehicles. The agency has initiated a program to evaluate current belt systems and identify factors that improve comfort and convenience. We anticipate rulemaking action to improve performance of current systems will be initiated by mid-summer of 1984. In addition, a program to partially address all of industry/government/labor effort.

The agency has a research program underway to look at ways to improve the performance of steering wheels in passenger cars. Results from this effort will be available in mid-1984. We need to have the data from this effort before we can decide whether to consider proposing improvements to truck steering systems.

*Question 6.* There is evidence that some foreign cars are imported into this country for general use that do not fully meet our safety and emission requirements, even after supposedly being upgraded to meet the U.S. standards. What is NHTSA's position on these "grey market" vehicles and is NHTSA doing anything to address this issue?

Answer. Congress has directed that all cars on American roads meet our safety standards. We take very seriously our responsibility to enforce this law. During fiscal year 1983, approximately 11,000 investigations involving noncomplying imported vehicles were initiated. Thirty-four percent of these involved a commercial importer and, potentially, a "grey market" problem. During the same period, 5,985 investigations were closed and penalties recommended under Customs-held bonds in 614 cases. As noted above, commercial importations of noncomplying vehicles (sometimes referred to as the "grey market") are currently estimated at 34 percent of the total number of vehicles permitted conditional entry under the terms of the Joint Import Regulation. The remaining 66 percent cover noncomplying vehicles, also permitted conditional entry, purchased abroad by tourists, returning members of the armed forces, and other persons lawfully entering the United States.

The issue is addressed by NHTSA on a continuing basis by monitoring all importations and requiring substantiation by the importers that necessary modifications to bring vehicles into compliance with the FMVSS have been made. Emissions requirements are the responsibility of EPA. The decision to release vehicles for which statements of compliance have been submitted by importers is normally based upon receipts for compliance work performed usually supported by photographic evidence. Inspection of vehicles is also conducted when doubts arise relative to the authenticity of the submitted statements, as received.

We are aware of recently increased activity in the "grey market" area particularly with respect to VW Beetles manufactured in Mexico. This particular activity is currently under active investigation and is being pursued vigorously.

*Question 7.* The Department has recently submitted proposed legislation to the Congress to create a National Traffic Safety Administration. What specific safety benefits do you envision from combining the functions of NHTSA and the Bureau of Motor Carrier Safety, along with other highway safety functions of the Federal Highway Administration?

Answer. In proposing the creation of this new agency, Secretary Dole said that the highest priority of the Department is to assure the nation of a transportation system which is safe, in every respect, and that this consolidation would enable the Department to improve safety for the motoring public.

I agree that there are significant safety benefits to be realized from the creation of a National Traffic Safety Administration. The key safety benefits that we foresee are:

*(1) Effective oversight by the Secretary, the Congress, and the public.*—The consolidation will provide an opportunity to examine highway-related safety programs in a broad, coordinated context and to assign line accountability—through a single administrator—for a comprehensive program to improve highway safety. We think that a single Administrator for these programs will ensure consistent policy direction to the rulemaking, research and enforcement staffs. We also see benefits associated with better planning and coordination of safety data and statistics, which are key components of many policy decisions.

*(2) Consistent regulatory policy.*—Consolidation will ensure that regulations governing the design and performance of motor vehicles are integrated to reflect engineering, operational, and enforcement concerns, which should achieve an even higher degree of safety for the motoring public. We see some real benefits associated with combining NHTSA's strong technical expertise with BMCS' strong operational expertise, so that both dimensions are considered in making decisions on truck regulatory policy.

*(3) Increased visibility and improved constituent relations.*—The consolidated organization will pull together, in a highly visible unit, functions and interactions with constituents that are now distributed in two DOT administrations, and will improve Departmental relationships with the many affected government, business, labor, and consumer constituent groups. This improved responsiveness to our constituents contributes to safety by setting up a way to give speedier attention to their safety concerns, giving them a single point of contact to make their safety concerns heard and creating a streamlined mechanism for the delivery of safety research results and other assistance.

*Question 8.* What is your view of the Periodic Motor Vehicle Inspection (PMVI) Program for motor vehicles? Do you favor periodic motor vehicle inspections at the State level to identify defects which might cause accidents and injuries?

Answer. Although NHTSA has conducted some research and studies that show 5 to 12 percent of all accidents are caused or contributed to by mechanical defects, the studies do not indicate whether a properly conducted motor vehicle inspection program could reduce the number of accidents caused by vehicle defects. Our studies are not recent; and a survey of literature done in 1978 provides very little, if any, reliable data that would answer this question.

Such studies are most complex in that several variables must be reported reliably and analyzed carefully. They are: (1) was a vehicle defective system or component a causative factor in the accident; (2) even though an effective program can reduce [outages] by as much as 50 percent, what would be the corresponding decrease in accidents caused or contributed by mechanical defects?

In 1976, 31 States, the District of Columbia, and Puerto Rico had some type of periodic motor vehicle inspection program ranging from random inspections to cyclical inspections every 6 months. In 1983, 21 States, the District of Columbia, and Puerto Rico have some type of program.

During the next year, we will collect from the States current analytical data on this issue. Obviously, 10 States have repealed their laws based on their own analysis of this issue. These data will give us a current informational base.

Each State should look at the magnitude of its own problem, assess the effectiveness of its program and compare these benefits with other priorities.

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### Questions of Senator Danforth and the Answers Thereto

*Question 1.* What do you consider the most important goals you want to accomplish as NHISA Administrator?

Answer. My overall aim is to make motor vehicle transportation safer, and I have set the following goals to accomplish this end:

Prompt resolution of the automatic restraint issue, based on current data, up-to-date comments, and a solution that is workable, reasonable, and in the best interest of the traveling public.

Creation of a safer environment for vehicle travel by continuing to raise public awareness of the risk and consequences of driving while drinking and of the tremendous life-saving benefits of wearing safety belts, with a national goal of 25 percent safety belt use among the public by spring 1986.

Vigilant law enforcement of vehicle safety defect investigation and recall programs which protect consumers from unreasonable risk of accidents, death, or injury due to motor vehicle defects.

Continuation of a program approach which emphasizes saving lives cost-effectively through a conscious, coordinated and carefully devised balance among highway, motor vehicle, and driver safety improvements.

Improved vehicle safety performance through regulation, where appropriate, and encouraging the automotive industry to voluntarily upgrade safety.

Increased assistance to the consumer to help them make informed decisions in the marketplace, such as through the New Car Assessment Program and through "Autowise," a forthcoming consumer publication on automobile safety.

Active involvement in a world-wide effort to harmonize designated vehicle regulations among participating countries, with current emphasis on passenger car lighting and braking.

Maximize the enhanced opportunities provided by the newly proposed National Traffic Safety Administration for improved coordination and better oversight of the various highway safety functions.

*Question 2.* Do you foresee NHISA undertaking any specific highway safety initiatives under your leadership? If so, what types of initiatives?

Answer. We are currently planning initiatives to improve highway safety in the near and long term through a variety of activities including additional regulation of vehicle design, where appropriate, supporting market demand for safety features through upgraded consumer information and through educational programs to modify individual behavior.

Possible rulemaking initiatives in the near term include upgraded side impact protection, improved steering column energy absorption, and improved headlighting.

Consumer information will be improved through:

Publication of a new consumer information book titled "Autowise" containing automobile crash test results, gas mileage data, and advice to motorists on the dangers of drinking and driving as well as the need to wear safety belts.

Development of a method for testing bumpers which would provide information related to low speed damage resistance.

More rapid publication of automobile crashworthiness information provided by the New Car Assessment Program.

Educate consumers on automatic restraint systems and help promote through demonstration programs with public and private sector fleets.

Strengthen the ongoing alcohol program by increasing the award of Alcohol Safety Incentive Grants to States and initiate research to determine the effects of drugs other than alcohol on highway safety.

Increase safety belt usage by expanding State and community based programs to 20 communities across the United States. These programs consist of community-wide volunteer safety belt educational activities as well as corporate safety belt usage policies and incentives.

Vastly improve the effectiveness of the National Driver Register by pilot testing on on-line Problem Driver Pointer System, which assists States in identifying license applicants with more than one license and multiple violations, and by developing a model State licensing procedure for commercial vehicle drivers.

Improve Emergency Medical Services by developing guidelines for effectively managing small, rural, volunteer ambulance services; publishing guidelines to assist in the development and operation of statewide EMS management information systems; and developing a system to promote the exchange of information between EMS organizations.

*Question 3.* What is the current status of the Department's efforts to purchase airbag-equipped vehicles for the General Services Administration?

Answer. The General Services Administration is currently in final negotiations with the Ford Motor Company and it is hoped that a contract will be signed shortly.

*Question 4.* In what *specific* ways do you believe the Department's proposal to create a National Traffic Safety Administration will benefit the trucking industry?

Answer. The proposal would combine the BMCS programs that deal with motor vehicle operational and in-service issues with the NHTSA activities concerning new vehicle performance and State-administered highway safety programs. As a result of combining these activities the Department would have a:

1. More cohesive and effective safety program dealing with issues of concern to the trucking industry;

2. Single organization to touch base with the various outside groups interested in trucking issues;

3. More coordinated and responsive truck research and regulatory program which would be able to address broader issues; and

4. More effective internal operation in terms of use of professional manpower and contract resources.

*Question 5.* What groups support DOT's proposed safety reorganization?

Answer. A number of groups were contacted and briefed on the proposed reorganization. The vast majority of the organizations contacted informally endorsed the concept of the Secretary's proposal to establish a National Traffic Safety Administration.

It should be noted, however, that these contacts were made before the proposal was finalized and that certain general caveats are attached to all positions as they were expressed:

1. The specific details of the proposed structure will determine the absolute position of these organizations (for example, reporting structure of BMCS, field organizations, funding and staffing levels, budget, mechanism for policy development and program implementation, etc.).

2. Given the pecularities of each group's mechanism for taking an official position (ranging from mail bailots to endorsing a policy statement at their annual meeting), the information on these must be characterized as "unofficial," and cannot be considered absolutely final or binding. No organization was willing to give unequivocal support without knowing details of the organizational structure. However, their reticence does not imply that they would oppose the proposal itself.

3. Contacts have generally been with the staffs of the association, on behalf of the association, rather than with individual members who may have a different position on the proposal.

4. Many organizations are not able to take a formal position because of the divergent views of their memoership.

Major issues of concern to the groups included the following:

1. *Materials Transportation Bureau (MTB):* Inclusion of MTB was opposed by many public interest groups because it could dilute the new agency's focus on vehicle safety. The chemical industry insisted on a visible separate presence for MTB functions, and the emergency medical community believed that including MTB would enhance the Federal response to emergencies. (The MTB is not a part of the proposal as transmitted to the Hill.)

2. *Bureau of Motor Carrier Safety:* The second major issue of concern was the extent to which the new Safety Administration would keep a visible presence for motor carrier interests. Consumer (public interest) groups believed strongly that BMCS functions, e.g., rulemaking, enforcement, should be thoroughly functionally integrated with NHTSA in the new Administration. The motor carrier industry and the Teamsters are insisting on retention of organizational visibility for motor carrier issues. (The exact details of this aspect are still being worked out.)

3. Traffic safety groups are concerned about the need to assure continued and enhanced communications between NHTSA and FHWA because of the interrelationship among human, vehicular and roadway highway safety factors, and that there be no dilution of vehicle safety.

4. Consumer (public interest) groups support the concept as long as MTB is not included.

5. Motor carrier groups support the concept as long as there is visibility for motor carrier issues.

6. Insurance groups expressed concern that the consolidation might dilute safety.

7. The State and local governmental groups expressed general support for the concept of consolidating grants and programs for greater efficiencies in the administrative process. All State and local government groups are interested in enhancing safety programs through effective intergovernmental liaison.

8. Hazardous material transportation groups expressed concern that MTB functions would be diluted. MTB is not included, so these groups are now basically neutral.

SAFETY ADMINISTRATION CALLS

*Organization; Comment—Contact and Phone number*

Alliance of American Insurers; concern that consolidating might dilute auto safety, support contingent on enhancement of standards setting functions—Sally Kirkpatrick, 822-8811.

American Association of Motor Vehicle Administrators; support concept—Don Bardell, Executive Director, 624-1955.

AASHTO; Some merit to consolidation; have not taken a position yet—Frank Francois, Executive Director, 624-5800.

American Automobile Association; support proposal move in right direction—George Viverette or Chuck Brady, 222-6000.

American Bus Association; concerned about BMCS, unless guarantee more money for inspectors and enforcement, would just as soon leave it where it is—Susan Perry or Norm Sherlock, President, 293-5890.

American Insurance Association; concern that consolidation not dilute auto safety, focus on standard setting function—Jim Kimball or Penny Farthing, 293-3010.

American Petroleum Institute; neutral (MTB not included)—Ken Leonard or Jerry Hurley, 457-7000.

American Public Transit Association; bus safety standards removed, so neutral—Jack Gilstrap, Executive Director, 828-2800.

American Trauma Society; strongly support—Dr. R Adams Cowley, President, 301-528-6846.

American Trucking Association; support proposal—George Mead or Will Johns, Bennett Whitlock, President, 797-5000.

Center for Auto Safety; support conditioned on transfer of safety design, and construction standard setting authority from FHWA to NHTSA—Clarence Ditlow, Executive Director, 659-1126.

Chemical Manuafacturers Association Neutral (did not affect MTB)—Alan Woodford, 887-1136.

Consumer Federation of America; Supports position of center for auto safety—Steve Brobeck, Executive Director, 387-6121.

Hazardous Materials Advisory Council; neutral (did not affect MTB)—Julie Siebert, Managing Director, 783-7460.

Highway Users Federation; general support of concept want to see details relating to structures, funding etc.—Peter Koltnow, President, 857-1200.

Insurance Institute for Highway Safety; concern about diluting auto safety—Andrew Hircko, 333-0770.

International Assoiciation of Chiefs of Police; strongly support—Bill Nash or Norman Darwick, Executive Director, 948-0922.

Motor Carrier Advisory Committee; support if MBCS is upgraded—Dick Swennes, Chairman, 503/222-9841.

Motor Vehicle Manufacturers Association; endorse concept—Jim Adduci, President, 862-3910.

Nader, Ralph; support concept, would oppose if MTB is included, need to assure no dilution of vehicle safety.

National Association of Counties; support if enhances local safety efforts—Geoff Trago, Transportation Director, 393-6226.

National Association of Governor's Highway Safety Reps.; support concept concerned about human, vehicular and roadway-related highway safety factors—Judie Stone, Executive Director, 624-5877.

National Association of Independent Insurers; concerned about consolidation might dilute auto safety, support contingent upon assurances regarding safety related standard setting functions—Chuck Taylor, 484-2350.

National Association of Manufacturers; informally support concept to emphasize safety, but given diversity of membership probably won't take a formal position—Hugh Brady, 626-3700.

National Association of Regional Council; support concept—Chris Steinman, Transportation Director, 457-0710.

National Conference of State Legislatures; support proposal—Donna Weiss or Cathy Wiggins, Transportation Director, 737-7004.

National Consumer League; neutral—Barbara Warden, 797-7600.

National Highway Safety Advisory Committee; supports consolidation—Peter Griskivich, Chairman, 426-2872.

National Industrial Transportation League; have no problems with proposal—M. J. Fiocco, Legislative Director, 842-3870.

National League of Cities; support concept—Frank Shafroth or Barbara Harsha, Transportation Director, 626-3020.

National Governor's Association; support as long as it does not add new Federal directives affecting State governments—Charlyn Cowan, Transportation Director, 624-5300.

National Safety Council; support, feel commitment to safety more important than the structure of the organization—Chuck Hurley or Nancy Burke, 293-2270.

National Sheriffs Association; supports consolidation—L. Cary Bittick, Executive Director, 872-0422.

National Tank Truck Carriers; neutral (MTB not included)—Cliff Harvison, Executive Director, 797-5425.

Private Truck Council; supports if BMCS upgraded—Richard Henderson, Executive V.P., 785-4900.

Public Citizen; support if MTB not included, also concerned about dilution of vehicle safety—Joan Claybrook, President, 293-5084.

Teamsters; support—R. V. Durham, Director of Safety, 624-6800.

U.S. Chamber of Commerce; staff support concept, hard to get official Chamber position—Bill Kelleher, 463-5887.

U.S. Conference of Mayors; supports consolidation—Len Simon, Transportation Director, 293-7330.

*Question 6.* Do you believe it would be beneficial to include the Department's hazardous materials transportation functions in your proposed Safety Administration?

Answer. The proposed reorganization will focus on the safety of highway traffic and transportation. I do not believe it would be beneficial to include the Hazardous Materials Transportation Bureau (MTB) functions at this time for the following reasons:

1. The hazardous materials transportation function involves more than motor vehicle transport. Shifting responsibility for safety aspects of different modes of freight transportation would significantly broaden the organization's responsibilities and weaken highway safety efforts.

2. Transportation of hazardous materials is a highly complex issue in and of itself. We should concentrate first on improving truck safety.

3. If appropriate, MTB responsibilities may be integrated at a later point in time. Since legislation would not be required, the Department possesses a great deal of flexibility in determining the best way to manage this program.

*Question 7.* What is the status of DOT's "buckle-up" campaign? What have been the results of this program to date?

Answer. The national campaign to increase the use of safety belt and child safety seats is going very well.

More than 30 volunteer and service groups are officially involved with the Department of Transportation and are reaching out to their employees, members, customers, and other individuals to promote the use of safety belts and child safety seats with an emphasis on education. Increased effort is being made to work with public health organizations and, in general, deal with nonuse of safety belts and child safety seats as a "wellness" issue.

Contacts with top management of companies across the country have resulted in strong and positive support. An employee's manual has been prepared to provide specific guidelines for implementing various types of programs to increase employee use of belts to decrease the economic costs stemming from nonuse. Discussions will soon be held with a number of professional societies and other intermediary organizations to promote the use of the manual and the initiation of safety belt programs.

Public service advertisements have been aired on radio and television and have appeared in the printed media so that millions have received the belt and safety seat message.

State and local government activity has been expanding. Efforts to promote the use of child safety seats have resulted in use laws in 41 States and the District of Columbia and in a large number of loaner and education programs. NHTSA has entered into agreements with several communities to evaluate the comprehensive safety belt/child safety seat programs that they are establishing. Other communities are being given technical assistance.

Safety belt usage rates, based on surveys of 19 cities, have increased from about 11 percent to about 14 percent during the past year. Child safety seat use is 41 percent, up from 15 percent in 1979.

There are also survey indications of increases in, awareness and self-reported use. The average percentage of people who had seen or heard an advertisement concerning safety belts or child safety seats increased from about 52 percent in April 1982, to about 70 percent in a recent survey. Self-reported use has also increased.

*Question 8.* Do you favor mandatory safety belt use laws, either at the Federal or State level?

Answer. We do not favor a Federal safety belt use law. This is an issue which we believe is best left to State and local governments to determine. They can be more effectively involved in helping to bring together the various elements that are needed to have a successful safety belt and child safety seat usage program. One of the most important of these is education. Other elements include media programs,

incentives and employer policies requiring usage. States or communities that organize coalitions of organizations to develop and implement comprehensive safety belt programs will be successful in increasing belt usage and at the same time build a base of support for possibly considering safety belt use legislation at the State and local level.

The need for community-based support for achieving increased safety belt use cannot be over-emphasized. Enactment of State or local government legislation would be impossible without it. Also, if there is not a significant level of public support for a belt law, there would likely be little or no enforcement of the law. In any event, the decision as to whether the public would support a required law is a decision best left up to States and communities.

If a State shows interest in enacting such a law, we would certainly encourage such enactment and provide whatever technical assistance is needed.

*Question 9.* Please describe NHTSA's ongoing activities at combatting the drunk driving problem.

Answer. NHTSA's ongoing activities aimed at combatting the drunk driving problem are in three major areas. These areas are complimentary to each other and are based on the belief that the drunk driving problem is a local problem and therefore can most effectively be dealt with at the local level. With this as a premise, we are concentrating its resources as follows:

1. *Community-based Programs:* Working with the States and localities to develop comprehensive community-based programs that coordinate all the facets of the drunk driving systems from enforcement through prosecution, sanctions, licensing, recordkeeping, education, rehabilitation, and public information. In this regard, we have established 10 target or model communities throughout the Nation and plan to increase this number annually.

2. *Alcohol Incentive Grants (Section 408):* Working with the Governors' Representatives for Highway Safety, NHTSA staff provides technical guidance and encouragement to State officials interested in qualifying for alcohol incentive grant funds. Thus far, 19 States have applied for grants and 9 have qualified. An additional two to three States are anticipated to qualify by year end. We anticipate by the end of the 3-year grant program, most States will have qualified for a grant.

3. *Training and Information:* Acting as a national resource for alcohol information concerning drunk driving.

NHTSA has developed a series of training courses which it conducts for States and localities. Among these courses are: Detection Techniques for Police Officers; Judicial Training for Judges; Program Management for Local Officials; Program Evaluation for Analysts; Prosecutors Training Course (under development).

We have also published the following:

"How to Establish a Drunk Driving Task Force"

"How to Develop Financial Self-Sufficiency for Drunk Driving Programs"

"Standardized Test Procedures for Evaluating Radio Frequency Interference (RFI) Presence"

"State DWI Law Digest"

"Public Information Materials Catalog"

In fiscal year 1983, NHTSA has provided training to over 1,000 police officers, 600 State and community officials, and 1,400 judges. And we have responded to several thousand requests for materials.

*Question 10.* Do you anticipate undertaking any new drunk driving initiatives?

Answer. We intend to maintain the alcohol countermeasure program as one of our highest priorities. As we learn of new approaches that appear to have promise, these approaches will be evaluated and if they demonstrate impact, this information will be disseminated to the States.

We will continue to work with other Federal agencies such as NIAAA and HHS to improve the Federal Government efficiency and effectiveness in dealing with the alcohol problem.

We plan on increasing our efforts in dealing with the youth drinking/driving problem and will develop and implement a long-term prevention/intervention program.

*Question 11.* As a means of combatting automobile theft, what is the Department's position on automobile component parts labeling, in conjunction with stricter penalties and tighter export controls? In your view, what would be the best way to implement such a labeling requirement?

Answer. Motor vehicle theft is a serious, expensive problem for consumers. Law enforcement experts tell us that motor vehicle theft costs our economy about $4 billion annually, and that this sum does not include the lost time and inconvenience experienced by a car owner whose vehicle has been stolen.

S. 1400 seeks to reduce auto theft by requiring the Secretary of Transportation to issue standards relating to the identification of vehicle parts and components and by strengthening the Federal criminal laws as they pertain to motor vehicle theft. As it is currently drafted, however, the bill would seek to accomplish these goals through an amendment to the National Traffic and Motor Vehicle Safety Act of 1966 and, thereby, has a serious potential to compromise auto safety and the National Highway Traffic Safety Administration's (NHTSA) safety mission. For this reason, and related reasons discussed below, we oppose the bill in its current form.

The Motor Vehicle Theft Law Enforcement Act would amend the Safety Act by adding a new category of standards to be called "security standards," and would require manufacturers to recall motor vehicles for "security defects." We are deeply concerned that this would dilute the meaning of the safety defect recalls in the minds of consumers. The term "security defect" is not defined in the bill and, in the context of the entire legislation, it is reasonable to assume that the legislative intent is quite broad.

We are also concerned that creating an entire category of regulatory authority (the "security standard") which would be linked, for enforcement purposes, to safety standards, is both unnecessary and unwise. The enforcement provisions associated with safety standards are deliberately more stringent than those associated with NHTSA's consumer regulations in order to impress upon vehicle manufacturers the serious obligation they have to comply with safety standards. Without belittling the importance of theft prevention, we question whether Congress intends to signal to the regulated industry that nonsafety regulation is as critical as the industry's safety obligations to the American public.

We have a related concern about the unnecessary breadth of the proposed regulatory authority. While the proponents of this legislation have urged its enactment on the basis of one new requirement (i.e., marking components of motor vehicles), the bill would create a road, new authority to issue an unlimited number of "security" standards. Indeed, the language of the bill clearly contemplates more than one such standard because it refers to the new standards in the plural form. Last year, in testimony in the House of Representatives, we opposed the bill for these reasons, citing also our concerns about directing our scarce resources away from our safety mission.

The House Subcommittee on Telecommunications, Consumer Protection and Finance has reported a bill that is somewhat different from S. 1400. We are still analyzing the new language, and do not have a position as yet. I might note, however, that the Administration's formal objections to S. 1400 did not deal with the portions of the bill covering stricter penalties or tighter export controls. As these issues are outside the scope of NHTSA's jusisdiction, we would defer to the Department of Justice on these points.

*Question 12.* Does NHTSA and do you favor repeal of the 55 mph national speed limit?

Answer. There is strong evidence that the slower speeds which resulted from imposition of the 55 mph national maximum speed limit have produced significant safety benefits in terms of reductions in motor vehicle fatalities and injury severity. However, because other safety improvements were being implemented during the same period, there is still considerable disagreement among highway safety experts as to the precise magnitude of the safety gains solely attributable to the 55 mph speed limit.

The speed limit makes sense in congested and densely populated areas. I can understand, however, that the 55 mph limit might be viewed as too low for areas less populated, especially in the west. As a general rule, I believe that State and local governments should have the authority to establish their own maximum speed limits. But, if Congress decided to return the authority to set speed limits to the States, I would urge the States to carefully review the benefits of the 55 mph speed limit when exercising such speed limit authority.

Under the provisions of the recently enacted Surface Transportation Assistance Act of 1982 (Public Law 97-424, January 6, 1983), the Secretary of Transportation has arranged with the National Academy of Sciences for a comprehensive study and investigation of the benefits, both human and economic, of lowered speed use to enactment of the 55 mph limit (with particular attention to savings to the taxpayers and whether the laws of each State constitute a substantial deterrent to violations of the 55 mph speed limit). The results of this study, together with recommendations, will be submitted to the Secretary and to the Congress during 1984. I can assure you that I will carefully review the conclusions and recommendations contained in that study.

*Question 13.* Under your leadership, do you envision that NHTSA will undertake more automobile and other recalls than conducted in the past?

Answer. Motor vehicle and motor vehicle equipment safety-related defect recalls are initiated (1) voluntarily by manufacturers, without any agency involvement, in response to complaints received by the manufacturers or in response to production deficiencies discovered; (2) voluntarily by manufacturers in response to investigatory actions by the agency; or (3) involuntarily by manufacturers in response to recall orders issued by the agency after agency formal investigations. Historically, there are more recalls each year in the first category but more vehicles are recalled each year in the second category. The number of recalls and the number of vehicles recalled in the third category are usually low.

The agency can act to elicit or order recalls only when vehicles or equipment with defects are produced, and then only if the agency becomes aware of the defects through owner/driver complaints to the agency. As a result, historical recall statistics display a large variation from one year to the next. The number of recalls can drop drastically from one year to the next. The number of vehicles recalled can drop drastically one year to the next and then go back up dramatically the following year.

It is really not possible to state that the agency will conduct more recalls than in the past. The agency is in a substantially reactive mode in the defects area. One thing that can be of benefit is to improve owner reporting complaints. In this regard, I have directed initiation of a program to advertise nationwide the existence of our Auto Safety Hotline, through which most owner complaints are received. I have also made staffing commitments, computer and other equipment commitments to the Hotline to accommodate the expected increase in call volume and to improve efficiency.

I am totally committed to the principle of correcting defective vehicles and equipment and I fully support the agency's investigatory activities, I will insist that the Office of Defects Investigation continue to be as thorough and diligent as it has always been in trying to elicit recalls. A recent major recall, for example, was volunteered by a manufacturer in response to an agency investigatory action that was based on only three owner complaints to the agency. Agency investigatory actions, the number of recalls, and the number of vehicles recalled increased while I was Acting Administrator. I believe this is indicative of the priority I place on these activities.

*Question 14.* Highway Safety Program Standard No. 1 at one time required periodic motor vehicle inspection by each State. Is this regulation still in force? If so, are there any ongoing NHTSA efforts to assure compliance with Standard No. 1?

Answer. Although the original Highway Safety Act of 1966 established compliance requirements, the Highway Safety Act of 1976 provided for more flexible implementation of the program, so that the Secretary does not now have to require State compliance with every standard or with every element of every standard. As a result, Highway Safety Standard No. 1, Periodic Motor Vehicle Inspection (PMVI), is viewed more as a guideline for use by the States, rather than a specific regulation. Nevertheless, as of October 31, 1983, 21 States, the District of Columbia and Puerto Rico continue to administer periodic motor vehicle inspection programs.

The Omnibus Reconciliation Act of 1981 (P.L. 97-35), required the Secretary of Transportation to begin a rulemaking process to determine those highway safety programs that are most effective in reducing accidents, injuries, and deaths (Section 1107(d)). The final rule issued as a result of this process identified the five most effective NHTSA highway safety program (Alcohol countermeasures, Police Traffic Services, Occupant Protection, Traffic Records, and Emergency Medical Services) as national priority areas, and established procedures for States to receive Federal funding under the State and Community Highway Safety Program. The rule also allows a State to use these funds to support projects outside the priority program areas, provided that a State follows established procedures for identifying and addressing a highway safety problem which might provide a level of payoff similar to or higher than that found in the national priority areas. Thus, a motor vehicle inspection project can still be funded by a State having suitable justification.

In the past, a number of studies have been published which differ among themselves on the value of inspection. The studies do not unequivocally document the effectiveness of PMVI, and we have not subjected them to a rigorous evaluation. We believe such an evaluation would be worthwhile, and we intend to review them and other current data during this fiscal year. The review also will include consideration of associated factors that cause States to repeal PMVI laws, and to resist their enactment.

*Question 15.* Title IV of the Surface Transportation Assistance Act of 1982 requires DOT to establish minimum performance and installation standards for tractor-trailer spray control devices. What is the current status of the spray control rulemaking? When do you anticipate issuing the final rule?

Answer. At the present time, the preparation of a notice of proposed rulemaking has been completed and that notice is undergoing final review within the agency. I anticipate that the NPRM will be forthcoming shortly. The issuance of the notice has been delayed beyond the anticipated schedule because of issues and problems uncovered during a NHTSA test program.

The date statutorily mandated for issuing the final rule is January 6, 1984. Because of the problems uncovered in our research, it now appears probable that the issue of the final rule will be delayed beyond that date.

*Question 16.* Does NHTSA have any ongoing research concerning means of improving the current steering wheel design in trucks?

Answer. In 1980, NHTSA began research to identify the principal contributing factors to heavy truck occupant fatalities, as well as potential ways of preventing those fatalities. The project identified ejection, rollover and entrapment, and contact with the steering wheel as being the primary mechanisms resulting in truck driver fatalities.

A program to partially address all of these issues is underway in the form of a joint industry/government/labor effort to get more drivers to wear their safety belts. Truck driver safety belt use rates are extremely low.

Fiscal years 1984 and 1985 funding levels for heavy truck safety research are such that the majority of the work is focusing on crash avoidance issues which have been deemed to be of a higher priority. Increased funding would be necessary before further work could be done to determine what, if any, improvements could be made to truck steering wheel crash protection performance.

Senator DANFORTH. The final witness is Mr. Clarence Ditlow, director of the Center for Auto Safety. Mr. Ditlow.

## STATEMENT OF CLARENCE DITLOW, DIRECTOR, CENTER FOR AUTO SAFETY

Mr. DITLOW. Thank you, Senator Danforth.

Senator DANFORTH. Could you just wait a second?

Senator LAUTENBERG. I am sorry, Mr. Ditlow, that I cannot stay here, but I will read your testimony.

Mr. DITLOW. I am the director of the Center for Auto Safety, a consumer group founded to improve vehicle highway safety. And I might say that the very first meeting that anyone from the Center for Auto Safety ever went to was back in June of 1969 before we were even formally incorporated, and that was indeed the first public meeting on airbags.

Instead of calling this an infamous issue, I would call it a tragic issue—the tragedy of why airbags are not in cars.

But I would like to abbreviate my statement and have the entire statement submitted for the record, if you will.

When Raymond Peck was nominated to be the NHTSA Administrator in April of 1981 we opposed his nomination because he had no auto safety background.

Senator DANFORTH. Would you wait a second, Mr. Ditlow? I apologize for the rude interruptions.

Mr. DITLOW. I think airbags are a little quieter than that.

Senator DANFORTH. Go ahead.

Mr. DITLOW. We opposed his nomination because he had no auto safety background whatsoever or any demonstrated concern for auto safety.

Today we oppose Ms. Steed's confirmation because, unlike Mr. Peck, who had no auto safety record, she has a demonstrated vehicle safety record as part of the administration for the last 2 years.

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Senator DANFORTH. Mr. Ditlow, I am sorry. You do not know when to start, I know. It is a very difficult situation. Try it again.

Mr. DITLOW. Because we believe that Ms. Steed shares the responsibility for the poor vehicle safety record during the last 2½ years. Unfortunately, when Mr. Peck was the NHTSA Administrator one had to watch what he did and not what he said. Indeed, we see that to date we are very much concerned that Ms. Steed seems to be carrying out the same program of inaction covered by a facade of failed promises.

I would like to cite a few examples of our concern. If she is approved, as you suggested, we think she should take a close look at this record and translate it into one of action rather than inaction.

For example, Ford transmissions. When the House Commerce Committee held a hearing, Ms. Steed announced that NHTSA would be investigating a list of some 52 Ford transmission fatalities. However, in a later letter to Representative Wirth Ms. Steed retracted that commitment, saying "I did not intend my commitment to investigate newly reported fatalities to be applied retroactively to fatalities reported before that commitment was made"—that is, before July 27, 1983.

It is simply outrageous that any administrator of a public health agency such as NHTSA would ignore 50 fatalities and refuse to investigate the reasons for the deaths.

We are also very much concerned that either Ms. Steed is not aware of what the agency is doing or she is covering up for a few of their woes. For example, we have seen a lot of controversy about the GM X-car brakes. One of the problems with the GM X-car brakes as to why the agency did not act earlier, was that GM was given secret access to tests that were confidential.

Ms. Steed has told us that all significant contacts with manufacturers are required to be put in writing and then put in the public files which would have covered the X-car brake situation. Yet, the chief counsel told the center, when we asked for those communications, that there was indeed no such requirement.

We are very much concerned about how we save a life in this administration. It seems that a life saved through a voluntary program is more important than a life saved through a vehicle safety standard. In touting the seatbelt education campaign, Ms. Steed proudly stated on June 10 of this year that for every 1 percent we can raise the current usage rate we can save 150 to 200 lives.

Yet just 8 days earlier, on June 2, Ms. Steed had signed and published in the Federal Register a 2-year delay of the seat belt comfort and convenience standard. In justifying the delay, NHTSA dumped on the same 1 percent increased usage in the use in seat belts as insignificant and they particularly said: "NHTSA had estimated the comfort and convenience requirements would increase seatbelt usage by at least one percent. However, even if the previous estimate of 1 percent increase in usage was assumed, foregone benefits associated with a 2-year delay would be small."

Now how can 150 to 200 lives per year be significant in one case and not in another? I mean, we ask for neutral assessment, but this is not neutral assessment.

We also are very much concerned about the promptness of the agency in responding under Ms. Steed. On August 26, 1983, the

center sent some 500 consumer inquiries about which cars still had 5-mile-an-hour bumpers to Ms. Steed and asked her what NHTSA was doing to fulfill its promise of May 1982 to test and publicly rate bumpers as a substitute for the 5-mile-an-hour standard.

We sent those inquiries to show that the American public is really concerned about which cars have the 5-mile-an-hour bumpers; and if they know they would buy them, just as the General Services Administration makes that choice, except the General Services Administration has a little bit more information than the average member of the public.

However, 2 months went by and we still have not received a response from Ms. Steed. We have now sent her another 100 letters. We suggest to Ms. Steed if she indeed does have a demonstrated concern for carrying out the Traffic Safety Act pay attention to this type of information.

Finally, we would like to conclude that based on Ms. Steed's record of failing to demonstrate concern for carrying out the mandates of the National Traffic and Motor Vehicle Safety Act over the past 2 years that we oppose her confirmation as the Administrator of the National Highway Traffic Safety Administration.

We recognize that it will be difficult, if not impossible, to get this administration to nominate anyone who would enforce the motor vehicle safety laws as they were mandated by the Congress. However, we believe it would be a mistake to bestow the honor of being the NHTSA Administrator on one who has been such an integral part of an unprecedented attack on the Nation's motor vehicle safety program as we have seen over the last 2½ years.

Thank you.

Senator DANFORTH. Thank you, sir.

Mr. Ditlow, let me just express my appreciation to you for being here and for your leadership in this area over such a long period of time.

I think that the next 9 months or 10 months or so are very, very important. Ms. Steed is going to be the administrator of NHTSA and I think that you and your organization can provide a very, very useful service, first by making it absolutely clear in the presentation of facts and information during this rulemaking process that airbags work and they work effectively and that they work better than anything else and that they are less intrusive than anything else.

In other words, by the end of this period of time I hope the argument would be so compelling that there is really no rational rebuttal to it. You can help make that case.

The second thing that I think you do is to help make that case not only to the Government but also to the American people because, as Ms. Steed pointed out in her testimony, she was very concerned about public receptiveness, and there is no doubt that there are a lot of people in the public who believe that airbags are kind of dangerous, bizarre gadgets—and they are not.

I think that we have, those of us who believe as you and I do, a kind of a burden that we have to shoulder to make that case to the American people. So I really do appreciate and will continue to appreciate your efforts and the efforts of the Center for Auto Safety in trying to further that objective.

Mr. DITLOW. Thank you. We hope we do not have to go through another 14 years.

[The statement follows:]

STATEMENT OF CLARENCE M. DITLOW III, DIRECTOR, CENTER FOR AUTO SAFETY

Mr. Chairman and members of the committee, thank you for the opportunity to testify on the nomination of Diane K. Steed to be the Administrator of the National Highway Traffic Safety Administration (NHTSA). I am the Director of the Center for Auto Safety, a non-profit consumer group founded to improve vehicle and highway safety.

When Raymond Peck was nominated to be the NHTSA Administrator in April 1981, the Center opposed his nomination because he had no auto safety background whatsoever or any demonstrated concern for auto safety. We believe the events of the past two years have confirmed the wisdom of our opposition. Until last week's announcement of the high-mounted brake light, NHTSA had not issued a single safety standard; instead NHTSA, concentrated on slashing safety standards right and left.[1, 2] The enforcement record of the agency over the past two years is just as bad with the number of recalls at a record low and investigations more than cut in half.[3]

Today we oppose Ms. Steed's confirmation because, unlike Mr. Peck who had no auto safety record, she has a demonstrated vehicle safety track record which is poor. As the NHTSA Deputy Administrator for the past two years and the Acting Administrator for the past five months, Ms. Steed shares the responsiblity for the dismal vehicle safety record during this period.

Both the NHTSA Administrator and Deputy Administrator are required to implement the Congressional mandates in the National Traffic and Motor Vehicle Safety Act. If anything, the activities of the past two years have shown the NHTSA under Mr. Peck and Ms. Steed was actively subverting the mission of the agency. The Center believes that Ms. Steed should not be confirmed based on her responsibility for the record alone. However, that is not all.

When Raymond Peck was the NHTSA Administrator, one had to watch what he did and not what he said. Unfortunately, Ms. Steed seems interested in carrying out the same program of inaction covered by a facade of failed promises. The following are but a few examples of how Ms. Steed's words belie her actions and why she should not be confirmed.

*Ford transmissions*

Over 50 consumers have been killed since December 1980 when automatic transmissions on Fords failed to hold or engage in park. Under Peck, NHTSA did not investigate these fatalities. In a hearing before the House Commerce Committee on July 27, 1983, Ms. Steed announced that NHTSA would now be investigating these Ford Transmission fatalities. In a masterstroke of doubletalk, Ms. Steed later retracted this commitment saying:

"ODI has not conducted any other investigations of the fatalities on this list, and has no present plans to do so. *I did not intend my commitment to investigate newly-reported fatalities to be applied retroactively to fatalities reported before that commitment was made.*[4] (Emphasis added.)"

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[1] Through June 6, 1983, the Reagan administration proposed to suspend or rescind or relax or terminate 44 present or pending motor vehicle standards; suspended, rescinded, relaxed, or terminated 39 existing or pending regulations; delayed the effective date of 5 final rules; proposed to delay the effective date of 3 final rules; agreed to consider 37 requests by the auto industry to modify or reconsider existing regulations; and has issued only 2 notices of affirmative rulemaking on vehicle safety standards. The two affirmative notices were only clever tactics to avoid issuing mandatory rules. One is for labeling jeeps on their rollover problem rather than recalling them. The other is a long overdue proposal permitting protective plastic-lined windshields issued the day before this committee's hearing on why the proposal had not been issued. (Attachment A is a summary of this record of regulatory obstruction.)

[2] The attachments referred to in this statement have been retained in the committee files.

[3] In a 6-month study of NHTSA's defect investigation and recall programs, the Center found recalls are at a 12-year low; hundreds of investigations have been closed or suspended despite evidence showing safety defects; industry has been given access to confidential test reports; and previously public records have been closed. Attachment B is a copy of the report.

[4] Oct. 3, 1983, letter from Ms. Steed to Representative Timothy E. Wirth. Attachment C is the correspondence with Representative Wirth on this defect.

It is simply outrageous that any "Administrator" of a public health agency such as NHTSA would ignore 50 dead bodies and refuse to investigate the reason for their deaths.

*Defect program*

On August 25, Ms. Steed responded to the Center's Study of and recommendations for improving the Agency's defect recall program in a letter that even Mr. Peck would have applauded for its inaccuracies and misleading statements.[5] For example, in response to our charges that GM had been told about confidential agency X-car brake lock-up tests, Ms. Steed responded:

"All significant contacts with manufacturers are required to be memorialized in writing, and these memoranda are regularly indexed and placed in the public files."

Yet the Chief Counsel told the Center no such requirements existed.[6]

Ms. Steed gave an even more distorted answer to the Center's finding that the agency had clamped down on public access to investigatory records:

"ODI procedures have become more open in the present Administration than they were in the past. Information about on going engineering analyses (EA's) is now readily available in the Technical Reference Division; in the past, it was not."

In fact, the situation is exactly opposite what Ms. Steed described. Detailed indexes to Engineering Analyses are no longer released; even simple listings of informal inquiries are not provided except under formal FOIA requests; investigation close-out reports are stamped confidential and withheld; and files themselves take weeks to get as opposed to days.

*Selective use of lives saved*

Ms. Steed has also demonstrated that a life saved through a voluntary program is more important than a life saved through a vehicle safety standard. In touting the seat belt education campaign, Ms. Steed proudly stated June 10, 1983, "For every one percent we can raise the current usage rate, we can save 150–200 lives." Yet just 8 days earlier on June 2, 1983, Ms. Steed had signed and published in the Federal Register a two-year delay of the seat belt comfort and convenience standard. In justifying the delay, NHTSA dumped on the same one percent increased usage in seat belts as insignificant.

"NHTSA had estimated that the comfort and convenience requirements would increase seat belt usage by at least one percent. . . . However, even if the previous estimate of one percent increase in usage was assumed, foregone benefits associated with the two-year delay would be small." [7]

How can 150–200 lives per year be significant in one case and not in another?

*Failure to respond*

When Mr. Peck was confronted by a failure to deliver on a promise, he often refused to respond. Again, Ms. Steed is emulating her predecessor. On August 26, 1983, the Center sent some 500 consumer inquires about which cars still had 5 MPH bumpers to Ms. Steed and asked her what NHTSA was doing to fulfill its promise of May 20, 1982, to test and publicly rate bumpers as a substitute for the 5 MPH standard. Two months later, the Center still had not received a response from Ms. Steed even though consumers still keep asking for bumper ratings as demonstrated by another 100 letters sent Ms. Steed on October 25, 1983.[8]

CONCLUSION

Based on Ms. Steed's record of failing to demonstrate concern for carrying out the mandates of the National Traffic and Motor Vehicle Safety Act over the past two years, the Center opposes her confirmation as the Administrator of the National Highway Traffic Safety Administration. We recognize that it will be difficult, if not impossible, to get this Administration to nominate anyone who will attempt to enforce the motor vehicle safety laws. However, we believe it would be a mistake to bestow the honor of being NHTSA Administrator on one who has been such an integral part of an unprecedented attack on the nation's vehicle safety program.

Senator DANFORTH. I am satisfied on the basis of Ms. Steed's testimony that this study will be so comprehensive and exhaustive

[5] Attachment D is the correspondence between the Center and NHTSA on the defect program.
[6] May 5, 1983, letter from Chief Counsel Frank Berndt (Attachment E).
[7] Final regulatory impact analysis 12 (May 1983).
[8] Copies of the Center's letters are included as attachment F.

and definitive that at the end of it we will be in a position to say that any further requests for studies or suggestions of study are dilatory.

Thank you, sir. That concludes the hearing.

[The following information was subsequently received for the record:]

NATIONAL SHERIFFS' ASSOCIATION,
*Washington, D.C., September 9, 1983.*

Hon. BOB PACKWOOD,
*Russell Senate Office Building,*
*Washington, D.C.*

DEAR SENATOR PACKWOOD: The National Sheriffs' Association is proud to support the nomination of Ms. Diane K. Steed for Administrator, National Highway Traffic Safety Administration.

Our Association has worked closely with Ms. Steed during her tenure as Deputy Administrator. She is a very capable individual and highly regarded by the law enforcement community.

Very truly yours,

L. CARY BITTICK, *Executive Director.*

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INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC.,
*Gaithersburg, Md., September 14, 1983.*

Hon. BOB PACKWOOD,
*Russell Senate Office Building,*
*Washington, D.C.*

DEAR SENATOR PACKWOOD: On behalf of the International Association of Chiefs of Police and the members of the law enforcement community, I request your favorable consideration of Ms. Diane Steed for the position of Administrator, National Highway Traffic Safety Administration. Ms. Steed's expertise and experience, both as an administrator and a highway safety professional, render her exceptionally well suited to assume this office. In addition, her interest in law enforcement issues relating to highway safety, as evidenced in her many meetings with the law enforcement community, has been encouraging insofar as the federal priorities in relation to the delivery of police traffic services are concerned, and we believe that her leadership will result in a well-structured and fairminded national highway safety effort.

I appreciate your consideration of the IACP recommendation.

Sincerely,

NORMAN DARWICK, *Executive Director.*

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[Mailgram]

Senator BOB PACKWOOD,
*Capitol One,*
*Washington, D.C.*

I am writing on behalf of the National Coalition of Hispanic Mental Health and Human Services Organizations [COSSMHO] to express our very strong support for the confirmation of Ms. Diane Steed as Administrator of the National Highway Traffic Safety Administration. We have a special interest in the functioning of this agency based on our work to improve the health status of the Nation's Hispanic Americans. Because one of the leading causes of death of Hispanics is auto accidents and because Hispanics are more likely than Americans in general to die from such accidents we look to NHTSA to provide the leadership necessary to reduce the needless loss of life on American highways. Traffic safety is just now being recognized as an issue of significance to the Hispanic community and we are very encouraged by

the concern expressed by Ms. Steed in our meetings with her. I am confident that she brings to the position not only the sensitivity to the problems of this country's diverse communities but also the knowledge and skills necessary to administer this vital office. I urge you to support her confirmation.

RODOLFO BALLI SANCHEZ,
*National Executive Director COSSMHO.*

[Whereupon, at 10:35 a.m., the committee adjourned, to reconvene upon the call of the Chair.]

# NOMINATION—FEDERAL RAILROAD ADMINISTRATION

THURSDAY, NOVEMBER 3, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
*Washington, D.C.*

The committee met, pursuant to notice, at 9:40 a.m., in room SR-253, Russell Senate Office Building, Hon. John Danforth presiding.

Senator DANFORTH. This hearing is on the nomination of John Riley for Federal Railroad Administrator. We are happy to have Senator Durenberger here this morning. I understand Senator Boschwitz is also coming.

Senator Durenberger.

## STATEMENT OF HON. DAVE DURENBERGER, U.S. SENATOR FROM MINNESOTA

Senator DURENBERGER. Thank you very much, Mr. Chairman and Senator Gorton. If I could find my statement here in all my material—basic package that Senator Durenberger would support for tax bills——

Mr. RILEY. Does that include leasing?

Senator DURENBERGER. Mr. Chairman, this is a unique opportunity for any Senator, and I know you have been in this position, as have all of us. For me it is a unique opportunity to suggest to my colleagues that the President in his wisdom has made an extremely good choice for the position of Federal Railway Administrator.

I will not detail all of John's accomplishments. I have made an effort to detail those in a formal statement which I would ask be made part of the record of this hearing. But let me just, Mr. Chairman, by way of dealing with the character, of the nominee, describe for you both the style and the substance that we set by way of measuring performance in our office.

Shortly after I took office in 1978, in order to be helpful to people who were part of my being a Senator, I set out in about one and one-quarter pages a statement of purpose of why we are all a Senator. And as part of that I set out my definition of problem-solving for myself and my staff, and it goes something like this.

In responding to constituents' problems, either of an individual or an institutional or representative character, we must see our responsibility to be responsive to that problem. My definition of responsive will always be resolution, not reply. And the test in each case will be: If it were my own problem, would I be happy with the resolution?

And I have been blessed, as I am sure each of you have been, because I know you both so well, with people who have helped me be a Senator who subscribe to that basic philosophy.

I first became acquainted with John Riley through Karen Riley, his wife, who was a reporter for a radio station in Minneapolis. The station was then owned by the person who I ended up defeating for election to the U.S. Senate, Mr. Robert Short. And because she was covering a campaign for Governor in which I was a participant, John got dragged on a Saturday when there wasn't a football game to one of my speeches. At the end of it he came up and said he would like to volunteer to help in my campaign. We have all had this experience—I gave his name and address to my campaign manager and 3 months later he showed up in a crowd again. He said, "Maybe you have found out something you don't like about me but nobody has contacted me." So personally I gave him an assignment and said get to work on the campaign.

Four months after I was elected I asked him to come down and be my legislative assistant in the Finance Committee. And those of you who have known him on the Finance Committee and in other areas can attest to not only his character but to the fact that John, if he is not careful, will be the quintessential public servant. Except for the fact that during the football season he does make four football games every weekend, he is a workaholic, in probably the best sense of the word.

He has been so responsive to constituent problems that when the President made the decision to nominate him, the assumption was that I would take early retirement from the Senate.

He has become in a very short period of time, despite my absence from this committee and other appropriate committees of jurisdiction, a major figure in this country in rail legislation; and in part that is because of a personal interest to which he can speak and in part it is because of the opportunities that have been presented here by circumstances in this country over the last several years; and in part it is because the State that we both represented when he worked for me is a unique institutional arrangement in which problems are quickly solved in the most practical ways, and not necessarily the most costly ways.

So a variety of legislation which I have introduced from the refundable investment tax credit to safe harbor leasing to railroad abandonment and elevator bankruptcy protection and so forth comes from the experiences that John generated. He also talked me into the cochairmanship of the Senate Rail Caucus and into a couple of trips to Japan and France to study high speed rail. Everywhere he has gone he has inspired others to think long term about what can be the greatness of America in the area of rail transportation.

He is an indefatigable optimist. He does not believe that there is anything that cannot be accomplished by people of good will. I would say he is farsighted but sensitive to the fact that you have to fill the potholes of today in order to make it into that future.

He is fair without compromising principle. He is self-confident without being arrogant. He has conviction without being stubborn or obdurate. And I would say to you that he has never left a task unfinished.

I would say that given the nature of the national role of rail in this country, you could not make a better decision than to recommend the confirmation of his appointment.

I thank you for the opportunity to be here today.

[The statement follows:]

STATEMENT OF HON. DAVE DURENBERGER, U.S. SENATOR FROM MINNESOTA

Mr. Chairman and members of the Committee, it is a great pleasure to be with you this morning and to have the distinction of introducing to you President Reagan's nominee to the Federal Railroad Administration, John Riley.

For all the long hours, pressures and family sacrifices, there are occasions when being a United States Senator brings great personal rewards. This is one of those occasions. Although I have known John and Karen Riley for only a relatively short period of time—five years—in that time they have become dear friends of Penny and me.

It is a special thrill to see someone who came into public service through his association with me now being called upon by the President of the United States for a position of such importance and significance. And, I should add, a position for which he is so eminently qualified.

I first came to know John when I was an unknown lawyer campaigning for the United States Senate in 1978. At that time John was even more unknown than I was. In fact, it took his wife Karen, who was a reporter for a Twin Cities radio station, to bring us together.

Throughout those long days of campaigning I was vaguely aware of this unknown lawyer volunteering his time and talents to my campaign. But I can't say that I really came to know John until late one night when I walked into my volunteer office after one of those 18-hour campaign days that are all too familiar to the members of this Committee. There was John, busily sketching out plans to coordinate a card selection at a Minnesota Gophers football game.

And believe it or not John pulled off that card section. The only problem is tht even John could only get a card section large enough to speel out "Dave" which elicited a puzzled "Dave who?" from the other 50,000 people at Memorial Stadium. Of course, in fairness to John, it may have taken all of the other 50,000 people to spell out "Durenberger."

With that kind of an auspicious start to our relationship, both John and I knew that it wouldn't be long before we would hook up again. Sure enough, by April of 1979 John had accepted my offer to come to Washington and serve as my legislative assistant to the Finance Committee. And since that first day, I don't think John has slowed down enough to even catch his breath.

Each of you has John's biography and many of you have worked firsthand with John on a variety of projects, so I won't detail his background and numerous accomplishments. Let me just share with you for a few minutes what it meant to a new Senator to have a person like John Riley on his staff.

Each of us has a different measure against which we judge the contributions of a staff member. My yardstick is a "statement of purpose" I wrote shortly after my election in 1978 to the Senate. In it I said:

"In responding to constituents' problems, either of an individual or an institutional or representative character, we must see our responsibility to be responsive to that problem. My definition of 'responsive' will always be a resolution, not just a reply. The test in each case will be, 'If it were my problem, would I be happy with this resolution?' "

More than any other public servant, elected or non-elected, John has consistently fulfilled and surpassed that criterion.

In 1980 when a group of shippers asked for our help to save a small and dilapidated rail line in southern Minnesota, it was John Riley who leaped at the opportunity. John not only played a key role in saving the line, but helped design an innovative package of private and local, state and federal government financing to renovate the line. Last summer John and I attended the ceremonies marking the completion of that renovation project and I can tell you that John deservedly received a lot more applause than I did.

In 1981 and 1982 another group of shippers—this time in western Minnesota—came to our office asking for help. The mainline of the Milwaukee Road was about to go under, leaving hundreds of Minnesota farmers without their economic lifeline. Once again, it was was John Riley to the rescue. His first step was to spearhead a firsthand inspection tour of the line for his predecessor at FRA, Bob Blanchette. At

each stop along the way John made sure that the people assembled were the ones who could best demonstrate the overwhelming local commitment to saving the Milwaukee Road.

From there it was literally hundreds of hours or work—most of it on his own time—that John devoted to saving the Milwaukee Road mainline for farmers in western Minnesota. John was the one person who kept bringing together all the parties involved—the states, the FRA, the Milwaukee Road, the bankruptcy court and the shippers themselves. The times when negotiations were at a standstill and the package in jeopardy were the times when John reached into his imagination and found the right compromise to keep things moving forward.

Last summer John and I helped open the Milwaukee Road's gateway to the west and once again it was John—and also once again, deservedly so—who received most of the accolades.

I don't know of a person in the legislative branch who is more committed to the future of rail transportation in our country. His creation of the Senate Rail Caucus is testimony to his decision to our nation's railroads.

Mr. Chairman, John Riley has been with me as a campaign volunteer, a legislative assistant and, since 1980, chief legislative counsel. In each of those positions he has also been my friend. In that capacity, I couldn't be happier for him; in my capacity as a United States Senator, I couldn't be happer for the future of rail transportation in this country knowing that John is able and willing to take on this vital position.

Senator DANFORTH. Thank you.

Senator Boschwitz.

## STATEMENT OF HON. RUDY BOSCHWITZ, U.S. SENATOR FROM MINNESOTA

Senator BOSCHWITZ. Mr. Chairman, there is little I can add to my senior colleague's recommendation, and yet I must say that despite what he has said, I have known John Riley longer than my colleague, and indeed have known John Riley's wife Karen before I knew him, which is indicative of the fact that she was involved in radio at the time and she was a newscaster for an all-news radio station which was owned by my colleague's opponent in his election campaign. But both she and John have established themselves as people of great integrity, of fine reputation, people who deserve to be supported by your committee, both by intellect and by capacity. And it is really a pleasure to be here.

I have known John, as I say, for many years prior to coming here, and I have known him well at the Senate too. Despite the fact that he served on Senator Durenberger's staff, I very often consulted him on the floor, particularly on Finance Committee matters and on matters that were before this committee, both of which John was very involved.

So it is indeed a pleasure to be here today to recommend John Riley to you, that indeed this committee will be taking a good step forward and it will bring credit upon itself and upon our country. Thank you.

Senator DANFORTH. Thank you, Senator Durenberger and Senator Boschwitz. We appreciate your being here.

John, would you like to make a statement?

## STATEMENT OF JOHN RILEY

Mr. RILEY. I would, Senator. And I want to preface that by thanking both Dave and Rudy, not just for what you have said but for giving me the chance to become involved in this enormous process of Government and for putting all transportation issues, and

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particularly rail, high enough on your agenda that people like myself became excited about them and convinced that we really could do something about them with our effort and our time.

Maybe as kind of a preamble, I have to tell you that I have sat in the back of this room on at least a dozen occasions and watched other people sit here at their confirmation hearings, and I can only tell the staff behind you that no matter how much you think that prepares you to sit here, it does not. This is really an overwhelming experience.

And at the risk of sounding like an Oscar recipient, I do want to give some thanks and make some introductions if I could. My parents are here today along with my younger brother, who is 16 years younger than I am. And had it not been for them, for many reasons, I truly would not be here today, but I would like to introduce my parents in the front row.

Senator DANFORTH. Good. We are delighted that your family is here with you.

Mr. RILEY. And I also want to give special thanks to a couple of people who have helped me prepare for this hearing. Had it not been for their work—well, to the extent that my answers are good, they have to share the credit; to the extent that they are bad, I assure you I have screwed it up: Chris Rooney and Lisa Palache. Lisa was formerly with Senator Weicker of this body. I would like to thank them for everything that they have done.

Senator, I don't think that any of us could ask for more than a chance to have a positive impact on the future of something we care very much about. There has been very little I have cared about more than the railroad industry since I first cut my teeth on its economics during our Midwest rail collapse in the mid-1970's. I really learned those economics from the bottom up. Dave Durenberger and I went from community to community and in some cases from shipper to shipper on Milwaukee Road lines trying to determine where we would fight for service, where we would concede to economic reality and try to help shippers find alternatives.

Since those days I have had the good fortune to be involved with railroad people, both passenger and freight, at just about every level. I have learned a lot, and many of the people sitting behind me today really are my teachers. I expect to learn a great deal more in the next couple of years, the committee and the Senate willing. But I do have some clear ideas on how I would like to run this agency, and by way of overview, I would like to share a few of those general concepts with the committee before we start questioning.

In my view, Senators, the constituency of this agency is much broader than railroad companies. It reaches out to include the employees who run the railroads and the shippers that give them a reason to exist.

It is my intention to run the agency on a strictly professional basis. I intend to treat the legislative branch and the private sector parties that we deal with the same way I expected to be treated when I worked in this building with a very good Senator and when I worked in the private sector as a private counsel.

That doesn't mean the agency will be able to say yes to every request. I would be dishonest to say that. But it does mean we will say yes or no and we will say so quickly.

This is an extraordinary time at FRA. We have a series of special projects, one-time occurrences that are historic in their own right—the Conrail sale, the Alaska railroad transfer and the Union Station redevelopment project. I will do everything within my power to conclude those projects during my tenure.

But I also have to stress to the committee that those projects are one-time occurrences and they are not the heart of this agency's on-going responsibility. In my personal view, the heart of that responsibility lies with our stewardship over issues of railroad safety and with our ability to input into the process of railroad reorganization, service and regulatory decisions.

I intend to handle safety at the Administrator's level. I have told both the legal and the safety policymaking staff at FRA that if I am confirmed by the Senate, it will be my commitment to take the eight major rulemaking proceedings now in progress at FRA and have our work on those proceedings completed by the early spring. And they have agreed that that is an achievable goal.

I am committed to staying with the process of system safety assessments as the best way to enforce our safety regulations. I can assure this committee that every member of the agency will be as committed as I am to devoting our efforts to maintaining the downward movement in industry accident, injury and fatality trends that we have seen in the last 2 years.

I am not ashamed to tell this committee that I am a believer in a strong rail passenger system, and it is my personal view that within our lifetimes, high speed corridor trains will revolutionize the Nation's transportation system.

But more important than any of these specifics, I want the agency to be a thought leader; I want the agency to be a problem-solver. I want us to be a catalyst to bring together the best ideas and the best people in the public and private sectors to address the problems that are common to all of us.

Senators, the rail industry, directly and indirectly, employs nearly a million people in this country. It serves tens of thousands of communities. It carries close to 40 percent of all the goods produced in America, and that is an increasing figure.

The ability to be the public sector spokesman for that industry is really an enormous responsibility, and I take it very, very seriously. Railroads defined the history of this country, and it is my view that they will also define its future.

Senators, anyone who has ever run a Lionel train knows why this is a good job, and my only hope is that when I am several years into this tenure that I can read a statement of commitment the way Dave Durenberger did this morning and be as true to its accomplishment as he has been over the last 4 years.

I would be glad to answer any questions. I expect to be here often, and I would be happy to answer any questions the committee has, either about my own background or about any of my visions for the agency.

Senator DANFORTH. John, thank you very much for an exceptionally good statement. The comments that were made by Senators

Durenberger and Boschwitz are not unusual. Ever since you were proposed for this responsibility, the reviews on your performance in public service to date have been really exceptional. I know that in my own office, the staff who have worked with you over the last 4 or 5 years have the highest regard for you, for your intelligence, for your ability to get things done and for your personal qualities as well. I don't think it would be possible to find anyone who is more highly thought of than you and more qualified for this job.

Now both Senators Durenberger and Boschwitz talked about your personal qualities, your character. I just want to ask one question along those lines designed to flush out the true nature of your character. He said that you are a great football fan. Are you still a Vikings fan?

Mr. RILEY. Senator, I have to concede that I have never been a Vikings fan. I have always been a fan of the New York Jets. It is not easy to admit that these days; nor is it easy to admit affiliation with the University of Minnesota.

Senator, I have to say that one of the things that people do when they sit where I am sitting now is to get nervous, as I have been, and make silly mistakes, as I have done, and in the course of introducing my family I probably laid the groundwork for a future divorce by failing to introduce my wife Karen. Compounding the problem, Senator, Karen is from Kirkwood, Mo., but I do want to introduce Karen.

Karen is actually the person who first interested me in railroads. When I met her we were in college, and she told me that her mission in life was saving the railroads. I had grown up in the shadow of the New Haven Railroad and I told her I didn't understand why they were worth saving. Over the years that attitude has changed, of course.

Senator DANFORTH. We are delighted to have your family here and especially your wife. Why she wanted to leave Kirkwood I don't know.

The Secretary of Transportation is charged with the responsibility of selling Conrail to the private sector. Can you tell us where we stand in that effort and where you see us going in the next year or so?

Mr. RILEY. I will, Senator, and I want to emphasize that I intend to tell you that not only today but often over the course of the next year. One of the problems in being a designated but unconfirmed administrator is that the rules of the game prevent you from acting like an administrator, and I have not been able to do what I have wanted to do in keeping everybody up-to-date on progress.

We are exploring—and I say we because I have been acting as a special assistant to the Secretary—a number of Conrail sale options. My view is that those options—assuming in the end that we do have options as I think we will—have to be tested by two criteria.

The first and most important in my view is the condition that that option will leave the railroad in following the sale. Will the railroad be able to continue service? Will it be financially strong? You can look at that from a different perspective and say will it return to the Government. The second consideration obviously is

the return to all of us, the taxpayers, for what we have invested in that railroad.

We now have an offer on the table, which has been described by its offerors as a starting point offer. And in fact, we have had some discussions and some progress on that with representatives of RLEA even in the last week. We have a class 1 railroad, the Santa Fe, that has expressed an interest in purchasing Conrail. We have had numerous meetings and discussions with Santa Fe. Obviously that has been somewhat clouded by the Santa Fe-Southern Pacific merger, but we are all encouraged by the fact that Santa Fe has indeed reaffirmed its interest in Conrail.

The Department has received a number of contacts, questions, feelers from other parties who may or may not be interested, and it is my intention following confirmation, and I have spoken with the Secretary about this, to go out and meet with these parties to determine their degrees of interest. I have also put my lawyer's hat on and been working with our general counsel in evaluating some of the more complex issues that surround the public offering scenario.

That is a general overview of where we are. I just want to conclude by saying that I do intend to go out on the road in the next few weeks and continue to explore purchase options for Conrail, and I would be very happy to keep the committee appraised of that progress. And I hope to be a focal point for communications on this issue in the future.

You know, it is interesting. People say well, you are from the Midwest; what do you know about Conrail or what is your interest in it? Obviously the Jets' equipment moves on Conrail and that makes it important to me. But more than that, Conrail is a major connecting carrier for people in the Midwest and I sat with the Senators at this table and your staffs through long hours when we put the NERSA bill together. And I can assure the committee that no one that I have yet talked to at DOT takes that June deadline very seriously in terms of its authority to break the railroad up and sell it in pieces. That just is not our intention.

Senator DANFORTH. As you know, legislation has been introduced recently and defeated in the House, but I am sure it will be a continuing issue, relating to the granting of the power of eminent domain for the purpose of construction of coal slurry pipelines.

Your predecessor took a very strong view that coal slurry pipelines were a threat to the railroads and a threat to those who rely on the railroads. What is your view on coal slurry pipelines?

Mr. RILEY. Senator, I would spend the better part of an hour giving you that but let me capsulize it. I, as I am sure every member of the staff in this room knows, have always been opposed to the granting of a national eminent domain power on coal slurry pipelines for many reasons. Some stem simply from personal opposition to a national power of eminent domain that cuts across State lines. Some stem from the view that if indeed there are cost savings to be passed on to consumers through the coal slurry pipelines, the back side is that they would, if indeed that scenario works out, by definition, decrease railroad employment and payments into the pension base on railroad retirement, causing an infusion of public funds into that pension base.

So what you have in effect is an inverse subsidy, a public subsidy to the railroad retirement base which results from any savings the pipelines may achieve.

I also believe that the coal slurry pipeline will give a new definition to the term captive shipper, and that is another reason for concern.

I have to conclude by saying I have expressed a personal opinion. I have honestly not spoken to anyone in the Department of Transportation on this issue. I do not know the extent to which this jibes or does not jibe with any policies of the Department, and it is not my intention to either buttress or undercut such policies. But it would be very difficult for me to fib about this one because everybody in the room knows where I stand on it.

Senator DANFORTH. Right. Thank you very much.

We had hearings in this committee on the Staggers Act and a number of shippers and small railroads expressed concern that the ICC was not doing enough to protect shippers against unreasonable railroad rates, and to encourage competition. Do you think that Congress should be doing something to meet these concerns? If so, what do you think Congress should be doing? Do you think that you, as the FRA Administrator, can do anything about these concerns?

Mr. RILEY. Senator, I think Congress is doing the right thing, which is to hold oversight hearings. I think it is a transition that is still in the process of shaking out.

Obviously my whole background has been a shipper and small railroad background. I have set up three small railroads in the course of my time with Senator Durenberger. I have worked with a number of shippers and I have that concern. But let me answer that broader question by breaking it down into particulars because deregulation in Staggers is a big word and different parts of it impact on people very differently.

First, on the issue of mergers and consolidations, I don't think the Staggers Act has had a negative impact on shippers or small railroads. It has accelerated a process that was already under way for many, many decades, but I think most of the consolidations that have occurred would have occurred anyway.

As a matter of fact, the ratemaking freedoms in Staggers have made it easier for small railroads to come into existence. I think one of the great, exciting things that is happening in the railroad system today is that not only do we have these class 1 consolidations, but underneath the umbrella of those consolidations there is a whole new breed of feeder railroads, short lines and regional systems springing up, a very important process.

Second, on joint rates, gateways, and reciprocal switching. In my view, Senator, that is the most difficult issue under the Staggers Act because there are good things, strong and valid points to make on both sides, if I can elaborate on that for a second.

In the great majority of the cases where a shipper will complain about, say a $100 surcharge on a joint rate, the back side is that there is a railroad that had to carry that traffic at $100 loss for a lengthy period of time because the regulatory system did not adapt to changing economics.

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The flip side of that entire issue, though, is that if you really want to put somebody out of business, there is no better way to do it than simply closing a gateway. Where does that leave us?

My view, and I don't want this to sound too softly philosophical because it is the kind of view that has to be applied on a case by case basis to give it definition—we cannot from a transportation planning perspective have a system where we have in effect an administrative or legislative subsidy by requiring carriers to run gateways at a loss or run unnecessarily circuitous routes.

By the same token, we cannot tolerate a system through which that power is used for, in effect, anticompetitive purposes. It is a hard line to draw.

In direct response to your question on the Commission, I have to say that I have been encouraged by the studiousness with which the Commission has now begun to view these things. In the last couple of months, we have had three major cases where a reciprocal switching agreement was ordered by the Commission over the opposition of a connecting carrier. I can make no comment on the merits of the Conrail cancellations. I just don't know enough about them. But they have been sent back to the Commission on remand.

There has clearly been a changed attitude by the Commission in the degree to which it is going to look into these things, and I am hopeful that they will indeed find the balance.

I want to add that we at FRA obviously have a certain amount of—I don't want to use the word jawboning because it has such a bad history, but we have a certain amount of influence to help individual hard cases. If there were ever a pattern of abuse, we would be the first to respond generally.

Ratemaking, I don't think you can build a case for abuse in ratemaking in a general sense. Since the Staggers Act went into effect we have had about 10,000 shipping contracts which have given shippers predictability, and in many cases rate systems that they could never have had in a deregulated system.

One of the reasons that the industry has captured an increasing share of transportation markets over the last 2 years is that it has exhibited some downward price flexibility at a time of economic slack. And that would not have been possible prior to Staggers. They would not have lowered those rates out of perceptions of the difficulty getting them back up again if circumstances ever required it.

Overall, anybody who went through what I went through in Minnesota 5 years ago with the total collapse of the economics of a regional rail system, knows why we cannot go back to a regulated environment. Yes, there is uncertainty with any economic transition, but it cannot come close to the uncertainty that came with chronic industrial weakness, deferred maintenance, and regional bankruptcies.

The condition of the Nation's mainlines, railroad investment and the financial health of carriers is better today than it has been in years. Carriers have been able to provide better service, and that is why the railroads' market share is increasing.

In kind of an underview to that whole process, I am not a believer that we should restrict economic freedoms out of the fear that they may be abused. If individual cases of abuse appear, I am pre-

pared to react to those individually through the powers that the agency has and the forum that I have. If a pattern of abuse appears, I will be the first one up before this committee with suggestions for change.

But I have read about half, and it is only because of phasing into a new job that I haven't read all, but I have read about half of the testimony that was offered at the Staggers Act hearings. We have 52 people on the FRA policy staff, and that is probably the most overworked segment of our agency because every day they monitor financial returns, contracts, and the progress of deregulation. It is an exciting time and I want to work with this committee and with large and small railroads in getting through the transition period.

Senator DANFORTH. We have had a trend toward mergers in railroads in the recent past. Do you view this with alarm or with joy, and do you think that any kind of governmental action is called for?

Mr. RILEY. I am tempted to say joyous alarm.

Actually, it is not a recent trend. It is the continuation of a trend that started in the 1860's. I cannot fetch the numbers out of my head as I sit here—I would be glad to provide them—but the class 1 railroads that we have today, about 30 some odd railroads, are the derivative of approximately 70 that we had about the late 1960's. And if you trace that back over time, as the economics have changed in this country from strictly local to regional markets to larger regional markets, national and then international, there has been progressive consolidation within the system.

I don't want to comment on the specifics of any individual merger. We will do that. I want the agency to be active in that regard. But generally speaking, I think the consolidation of the class 1 railroads is a response to changing economics. It is a response that the railroads were slow to grant and it is one of the reasons that they went through such a long period of economic instability.

But I can tell this committee firsthand that there is action, enormous action underneath the umbrella of those consolidations. We have had an explosion in the number of small railroads, shortlines, feeder lines. Small railroads are themselves consolidating into effective regional systems.

I would cite to the committee the example of the Delaware Otsego system in New York. It is a series of tiny shortlines and phenomenally unsuccessful railroads that have been put together and are now generating a rate of return in the double digits. And what it has proved to us all is that the same line can have different economics in different configurations. My sense is that the system, like water, will seek its level.

I want to emphasize to the committee, and it is something that I feel very strongly about, very strongly about, that the completion of the class 1 rationalization process, and we are just about there, is important, but so is the successful completion of this tier two rationalization process with the evolution of the smaller carriers. And in crafting policies, to the extent I have the ability to do that, I am going to seek policies that will forward both systems.

Senator DANFORTH. Senator Gorton.

Senator GORTON. Thank you, Mr. Chairman.

I have a handful of questions that are more parochial than those of the chairman, the first of which relates of course to the abandonment of so many hundreds of miles of line, or proposed abandonment of such lines, on the part of the Burlington Northern, now scheduled to be 500 miles or so in the State of Washington alone, and of course far more across its system.

The local rail service assistance program has been important in my State and in others in keeping some of those lines running, and at least in giving them a start toward independence. What is your attitude of support or questions or reservations about that program?

Mr. RILEY. Several comments, Senator. My State obviously is also served by the Burlington Northern. We have had abandonments and I have worked with that railroad, sometimes with, sometimes against over time, like any other railroad.

First on LRSA, I agree completely with the position the administration has taken on the section 505 program. That was essentially a class 1 consolidation program. We are just about at the end of that process and I don't see any project out there that would fulfill the statutory criteria.

For the same reason, I think the capping of section 511 makes eminent sense. That has in effect been rendered almost but not quite superfluous by economic change.

I can testify to the success of LRSA. We have two branch lines in southern Minnesota which are very, very profitable today and in fact have repaid the State through surcharges for the LRSA money that was put into them. Neither of those lines would be there were it not for the LRSA program.

I have a number of specific comments which I would be happy to share with the committee on problems I see in the structure of that program. But as we look out to what to do about abandonments across the country, I am going to ask the agency to take a fresh look at what our position has been on LRSA. I know the committee is going to hold hearings on it early next year and I look forward to coming back up to the committee with the results of that analysis. I can testify to what it has done.

Senator GORTON. And I assume suggestions for statutory changes?

Mr. RILEY. I would certainly be willing to respond to that. I would be happy to respond to that.

Senator GORTON. In passing, in your last answer you referred to the section 511 program. It may be that the Seattle and North Coast Railroad has the only application pursuant to that program at the present time. I am not sure whether that is true.

Mr. RILEY. We have a number of them. In the last week, as a matter of fact, I met with Seattle North Coast people. It is one of the applications that we are working. I cannot tell you how many.

Senator GORTON. Are you in support of that program, at least given its present size and cap?

Mr. RILEY. Oh, yes. Oh, yes. I think it makes sense to have programs on the books for a time of crisis. I think that the history of administrative agencies and legislative bodies suggests that we don't necessarily develop the best and most efficient programs when we react on short time lines in times of crisis.

And I think having that there is an advantage. I am certainly in agreement with what the Congress has done on it.

Senator GORTON. On another subject, Mr. Riley, the administration last year opposed funding the rail safety program, which may very well have been shortsighted. Do you have a view on the rail safety program which you are going to express either to us or within the administration?

Mr. RILEY. Senator, before I answer that one, let me add one point that just occurred to me on your last question, and I will answer them both.

Concern for how we acclimate to the newly rationalized structure of the rail system is a big one for me, and I think there are several things the agency can do about it. One of them of course is the public sector world of the Federal assistance programs, dispersing those funds well, helping people put together financial packages through the leverage of those funds.

But I think there can also be a private sector component, and I think we can be a banker of ideas, as well as a banker of dollars, and God knows we have to be because the dollars are short.

What I intend to do, if confirmed, is to divert a part of our Federal assistance staffing to a new division which will be composed of individuals who have had experience in making the kind of rapid financial evaluations you have to make when a line is scheduled for potential abandonment, and who have had some sophistication in negotiating accommodations with class 1 carriers or where there is some prospect of continuing service through a different format, a shortline or regional carrier, know how to go about the process of setting that up. And we will in effect use those people as a task force or a strike force to go out upon request from railroads, from shippers, from congressional offices, to show shippers on lines how to evaluate what their real economic options are.

We have done this in Minnesota and we have found in the great majority of the cases, shippers have recognized why the line was being abandoned, that it would cost them more to keep rail service than to shift to something else. But we have also identified cases where there was potential to continue service if certain financial actions were taken, and we have been able to share expertise with communities which are small and often don't have ready access to that expertise in the very, very short time lines that we have had to operate under. So that is somet' ing tangible I hope we can do.

I want to say that I think the States are in the best position to do that because they know their own problems, but we are anxious to use our expertise to supplement the States' efforts.

Senator, when I answered your previous question it stuck in my mind that I hadn't mentioned that, and in the course of answering it I have forgotten your second question. If you would remind me of it, I will be happy to answer it.

Senator GORTON. The rail safety program.

Mr. RILEY. Oh, yes. Is that a reference to the State rail inspectors?

Senator GORTON. Yes.

Mr. RILEY. Senator, I have to admit that that is the single hardest issue for me to make a judgment on. There are two arguments

on it, and I don't have really a personal opinion on it yet. I am going to try to form one.

If you assume that those people exist only because the Federal Government is funding half of their salaries, then you have about the best cost benefit you could ever have in safety inspection.

However, people at FRA and my predecessor, Mr. Blanchette, have argued somewhat persuasively, at least within the administration, that many of those jobs existed prior to the creation of that program; the great majority of them would continue to exist if it were phased out; and that really it is a bad cost benefit analysis and we would be better spending that money in other safety areas.

From being outside the agency, understanding its policies but not understanding the day-to-day implementation where, so to speak, the steel meets the rail, I really cannot give you an honest opinion on that. I will try to formulate one.

As you know, the agency is required to submit to Congress an analysis on how Federal involvement in that program can be phased out without damaging the program. I am aware of that. I am aware of the deadline and people at FRA are working on it. And I suspect I will come to an opinion on that as we continue that study.

But I want to stress to the Senator that I am not ducking your question. I really cannot—I have not been able to form more than a collection of other people's opinions on that issue because I have not been to the regional offices; I have not developed a personal sense of how those people interface with State funding requirements and with our inspectors on a day-to-day basis. And I am anxious to hear any input the Senator would have on that.

Senator GORTON. Thank you, Mr. Riley. Thank you, Mr. Chairman.

Senator DANFORTH. Thank you. Senator Stevens.

Senator STEVENS. Thank you, Mr. Chairman.

I have to be a little parochial and ask you about the Alaska railroad. I understand you did make a trip up there; is that right?

Mr. RILEY. Yes, I did, Senator.

Senator STEVENS. Have you become familiar with the directions of Congress under the Alaska railroad amendments that passed last December?

Mr. RILEY. Yes, I have, Senator, and in the job I have done as a special assistant to the Secretary for the last 60 days, I have had occasion to work on that project to some degree.

Senator STEVENS. And that will be your task now as representing the Secretary too, will it not, in your new position?

Mr. RILEY. Yes, it will, Senator.

Senator STEVENS. That is a very sensitive subject up my way and we are very interested in pursuing as rapidly as possible negotiations between the State and the Department of Transportation over the State's potential acquisition of the railroad.

Do you have any sort of a feeling about the progress that has been made in that regard?

Mr. RILEY. I do, Senator, and it is an encouraging feeling. We were able—and when I say we I mean FRA, DOT, and the USRA—to meet the original statutory deadlines in what amounted to our

inventory of the railroad and in the USRA's assessment of its value.

In the last week I had sent a team of people from FRA at the Secretary's request out to Seattle to meet with representatives of Alaska and their counsel. They came back from several days of work with a feeling that we had laid the groundwork for the beginning of a compensation agreement. We have studied the State's ideas and invited the State to send representatives to Washington, which they are doing today. And representatives from the State will be meeting with people at FRA today on that project.

And Senator, I am committed to getting that completed at the earliest possible date. And I cannot say enough about the level of cooperation that I have seen just from everybody on that project. I wish all the projects went that well.

Senator STEVENS. Yes, I think it is essential that the people involved in the railroad realize that there is a positive approach in both the State and the Federal governments. That is an essential transportation link in our State, and I would not want the personnel to feel that there is going to be a difficult transition period that might lead to our losing people who had substantial experience in running that railroad and dealing with the problems of our State.

Do you see any problems with the time frames involved in that bill or any difficulties that Congress and particularly this committee ought to be aware of?

Mr. RILEY. I cannot cite them today, Senator, and we have just reviewed them. I am of the opinion today that our agency and that railroad will meet those deadlines. And if there is any potential difficulty, I will give you as much early warning as I can possibly give you, Senator, because I was here during the course of that bill and I know that you are more responsible than any other single human being for the success of that process.

Senator STEVENS. Well, having been involved on the takeoff, as our old friend Senator Vandenberg mentioned, I want to try to keep it flying and not be there at the crash. So it is a difficult problem with us to make certain that the railroad survives this process as a viable entity.

I congratulate you and I congratulate the President for sending your name up. I think it is terrific to see people who have been involved in the process here and know the Hill to take on an agency such as yours. It is going to have a continued controversy without regard to my State over the period of time ahead of us and it is good to know that someone down there has been involved in this madhouse we live in. I don't know why you took the job but I am prepared to help you keep it.

Mr. RILEY. Thank you, Senator. I wanted an excuse to go to Alaska.

Senator STEVENS. Thank you, Mr. Chairman.

Senator DANFORTH. Thank you, Senator Stevens.

Thank you very much, John, for an excellent presentation, and we hope to get your confirmation accomplished before we adjourn. Senator Baker has told us that that will be November 18. Some people doubt that, but we hope to do it very, very quickly.

Mr. RILEY. Thank you very much, Senator.

[The biographical sketch, answers to questions of the committee, and material submitted for the record follow:]

BIOGRAPHICAL SKETCH OF JOHN HALLY RILEY

Address: 3411 Cypress Drive, Falls Church, Virginia 22042.
Date and place of birth: January 19, 1947, New York, New York.
Marital status: Married to the former Karen Jane Youngquist.
Names and ages of children: No children as yet.
Education: 1960–64—Fairfield College Preparatory School, Fairfield, Connecticut, H.S. Diploma (1964), 1965–68—Boston College, Chestnut Hill, Massachusetts. AB Economics (1968); and 1968–72—Cornell University Law School, Ithaca, New York Juris Doctor (1972).
Employment record: 1980–83—Senator David F. Durenberger, Chief Counsel, SR-375, Russell Senate Office Building, Washington, D.C.—type of work: Overall direction of the Senator's legislative staff, Chief Policy Advisor; 1979–80—Senator David F. Durenberger, Legislative Assistant, 1020 Plymouth Building (MN office), 12 South 6th Street, Minneapolis, MN 55402—type of work: Legislative Advisor to the Senator on business, economics, transportation, and civil rights issues; 1975–79—Meagher, Geer, Markham, Anderson, Adamson, Flaskamp, Brennan, PC, Lawyer, 2250 IDS Center, Minneapolis, MN—type of work: Trial lawyer.
May 1973 to December 1974—Isaacson, Rosenbaum, Spiegleman, & Friedman, PC, 633 17th Street, Suite 2300, Denver, CO—type of work: Lawyer; June to November 1972—Porteous For Congress, Campaign Manager, Porteous Warehouse, Portland, Maine—type of work: Campaign Manager.
Government experience: April 1979 to June 1980—Legislative Assistant to Senator Dave Durenberger. Responsible for transportation, business, communications, and general economic issues; July 1980 to June 1983—Chief Counsel, Senator David F. Durenberger. The Chief Counsel position encompassed the responsibilities of a legislative director, along with many of the administrative and political responsibilities that normally fall to an Administrative Assistant. The position of AA did not exist in the Durenberger office, and the responsibilities normally exercised by the Administrative Assistant were shared by myself and Communications Director, Tom Horner. Tom and I shared the status of Senior Staff Member.
Memberships: None.
Political affiliations and activities: 1967, President, Boston College Young Republicans; 1967, Field Director, John W. Sears for Mayor of Boston; 1968, Regional Director, New England College Republicans; 1969, Deputy Campaign Manager, John W. Sears for Suffolk County Sheriff; 1969–70, Field Director, Massachusetts Republican State Committee; 1972, Campaign Manager, Robert Porteous for U.S. Congress (First District, Maine); 1976, Member, Ad Hoc Committee on future of the Minnesota Republican Party (appointed by State Party Chairman); 1978, Chairman, Special Campaign Committee, Dave Durenberger for U.S. Senate; 1980, Steering Committee, Americans for Change (pro-Reagan Independent Committee); and 1982, Involved in all aspects of Durenberger reelection campaign.
Honors and awards: 1965–66—Winner of numerous intercollegiate debate awards, both individual and team; 1967, University Service Award granted annually by the Boston College student government to the six university students making the most notable academic and community service contributions to the Boston College community; 1967, Winner. Leonard (University) Oratorical Contest, Boston College; 1970–72—Connecticut Higher Education Merit Scholarship (Law School); 1981, Honored by employees of the Milwaukee Road for efforts on their behalf during the Milwaukee reorganization; and 1982, Honored by Great Plains Rail Employees and Shippers Association for efforts to preserve rail service to threatened communities during the Milwaukee Road reorganization.

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QUESTIONS OF THE MINORITY AND THE ANSWERS THERETO

*Question 1.* Over the last several years, the railroad industry has experienced significant change, particularly with respect to economic regulation. What do you foresee for the rail industry in the years to come?

Answer. I am a relative optimist on the industry's future, largely because of the changes brought about by the Staggers Act.

In contrast to the pre-Staggers period of the early 70's, when a half dozen major carriers went into reorganization during a period of overall economic prosperity, the railroad industry weathered the recent recession in comparatively sound condition.

Despite the severity of the recession, the industry did not lose a single Class I carrier. The railroad's investment in track and facilities remained relatively high throughout the recession, and the industry generated "cost side" improvements that should lay the groundwork for enhanced revenues as volume returns.

Overall, the industry has used the market freedoms granted by the Staggers Act to become competitive in a variety of new markets. Railroads have signed more than 10,000 contracts with shippers. Piggyback loadings continue to increase dramatically, and railroads appear to be capturing back some of the merchandise traffic that had been lost to trucks.

Despite the promise in these statistics, it is important to remember that the industry still does not have even one carrier earning a rate of return equal to the cost of borrowing. But there are clear signs of financial progress in its performance over the past 24 months, and I am optimistic that its performance will continue to improve in the years ahead.

I believe we will continue to see rationalization of the nation's rail system on two levels. On the major carrier level, we will see further consolidation of Class I carriers into a small number of major lines. But what many overlook is the fact that this rationalization process is going on with equal fervor at the "Tier II" level, as feeder lines, short lines, and regional railroads spring up to serve areas from which major carriers have withdrawn. Both of these processes are essential, and I expect them to continue over the next five years.

*Question 2.* In recent years, there has been a significant effort to reduce the Federal role in transportation and other areas. In this regard, how do you perceive the future role of the Federal Railroad Administration [FRA] with respect to rail transportation? Are there initiatives, legislative or otherwise, which you would like to pursue or see Congress pursue?

Answer. I hope to make the Federal Railroad Administration a clear spokesman and active participant wherever there is a legitimate Federal role in railroad issues:

(a) Safety Regulation. FRA will endeavor to complete its work on eight significant rulemakings (alcohol and drug abuse, hazardous material tank car retrofit, hump yard safety, signal rule revisions, commuter track, EPA noise regulation compliance, passenger regulations, and small railroad deregulation) by April 1, 1984.

(b) Safety Enforcement. We are committed to continuing the system assessment approach, and will commence or complete five separate assessments in the current calendar year.

(c) Rail Restructuring. We will be more active in commenting before the Commission on rail restructuring matters. I will also seek ways to assist shippers in evaluating their options, where rail lines are proposed for abandonment, and, where justified, pursuing alternative rail options.

(d) Deregulation. FRA will continue to monitor the implementation of the Staggers Act, and work with the appropriate congressional committees in assessing its impact. FRA will be active in presenting policy positions before the ICC and congressional committees on deregulatory issues.

In general, FRA will seek to play an active, constructive role as a thought leader on industry issues, and a catalyst in bringing public and private interests together on matters that affect the industry and its constituents.

*Question 3.* Clearly one of the most important rail issues in which the Department of Transportation [DOT] is currently involved is the sale of Conrail in the private sector. What goals and options are being discussed at DOT in this regard, and what are your views on these alternatives? If confirmed as Administrator, how would you envision your role in this process?

Answer. There is no issue before the Department with greater immediate impact than the transfer of Conrail to private sector ownership. At present, DOT has received a "starting point" offer from the Railway Labor Executives' Association representing labor, and has met with a carrier which has expressed an interest in pursuing a Conrail purchase (Santa Fe). Several parties have approached DOT with general expressions of interest, and those contacts are being pursued. DOT is also working to resolve the legal and technical complexities that would accompany a public offering.

In my judgment, these and any later options that might emerge should be evaluated on two criteria:

The condition in which they will leave the railroad at the conclusion of the sale (i.e., the most favored option would be that which left the railroad in the strongest financial position).

The return provided to the Federal Government on its investment in Conrail.

I intend to play an active role in implementing the responsibilities assigned the Department under NERSA, and intend to act as a focal point for communications with the appropriate congressional committees on the issue.

*Question 4.* Congressional representatives from the Northeast are particularly concerned about having input on behalf of their constituency into the sale process. How would you envision working with Congress on this issue? Do you see the need for any further legislation?

Answer. Having come from the legislative branch, I feel very strongly about the importance of remaining in constant contact with policy makers on both sides of the Hill as the Conrail process continues. I intend to take the initiative in maintaining that communication link, particularly with legislators from the Northeast region.

While it is likely that any sale scenario would involve additional legislation, it is simply too early to answer that question with certainty.

*Question 5.* As a staffer for Senator Durenberger on transportation matters, you of course were deeply involved in the Milwaukee bankruptcy and reorganization efforts. Given that experience, what steps would you recommend taking in a similar situation? Are there actions which FRA and Congress can take to prevent such occurrences in the future? How would you perceive the role of the Federal Government and Congress in the event that such a situation is presented again?

Answer. One of our primary objectives is to assure that the nation's rail service can continue to operate smoothly, without the kind of crises precipitated by the collapse of the Milwaukee and Rock Island, or Northeastern railroads 10–15 years ago. We have what we call an "early warning system" in our Policy Office, which involves regular and careful analysis of financial and operating reports of each Class I railroad to identify any potential difficulties. We would expect to be aware of any serious financial problems before they turn into a situation such as we had with the Milwaukee.

We are prepared to work with the management of individual railroad companies to encourage constructive steps to improve the viability and efficiency of their operations. The Department has special authority to bring the various affected parties together to discuss their options, under Section 401 of the DOT Act. We can assist in evaluating potential areas for consolidation of facilities, transferring excess properties to other operators, or locating alternatives for shippers. On the ICG, for example, points of excess capacity in that system have become all too obvious, and we will attempt to assist with orderly disposition of unneeded facilities.

I believe the Milwaukee Road was unique, and that we will not see a similar situation anywhere else in the railroad system. Most of the Western lines of Milwaukee Road were redundant from the first years of their operation, and frequently failed to generate sufficient traffic to produce a reasonable return to the company. The Milwaukee was in and out of bankruptcy throughout its history. Government regulation blocked any large-scale abandonment of the unprofitable transcontinental operations until finally the railroad came to the point of collapse.

Many other parts of the railroad system suffered from redundancy of facilities and extreme excess capacity. We still see that problem, but on a far smaller scale, as reform of the regulations and a more flexible policy at the ICC have allowed much of the excess trackage to be abandoned. Since 1975, the total miles of rail line in the country have dropped by more than 30,000, from 200,000 to closer to 165,000. That change has meant some dislocation to shippers whose lines were abandoned and a difficult adjustment for many communities, but I believe the railroad industry is healthier today and better able to provide quality service, and I don't expect to see abandonments and retrenching of the magnitude we saw on the Milwaukee Road.

*Question 6.* In recent years, rail labor and management have worked together particularly in the areas of safety, retirement and work rules to agree on changes more in tune with the realities of a changing economy. How would you perceive FRA's role in encouraging this cooperative effort? Are there other areas in which you see similar changes could be made?

Answer. Two years ago, Robert Blanchette pledged to industry and labor leaders that he would support and seek to advance any reforms in industry regulations that resulted from direct labor-managment neogtiations and were supported by both sides. That process expedited a long-overdue modernization of signal and track control rules, as well as the evolution of meaningful regulations on hump yard safety. I intend to reiterate Mr. Blanchette's commitment in my own right, subject only to the proviso that the actions recommended by labor and management must be, in my judgment, in the public interest.

*Question 7.* Since the passage of the Staggers Act, there has been significant concern raised by certain shippers and smaller railroads about the anticompetitive

trend within the industry, particularly in light of the increased merger and route cancellation activity. What is your response to this fear? Are there legislative initiatives or FRA efforts which you would recommend in response to these concerns?

Answer. I believe that existing legislation provides adequate regulatory criteria and ICC authority to guard against anticompetitive effects from mergers or rate and service actions. As I mentioned in response to the question about the future of the railroad industry, I anticipate further mergers among the major railroads, but I also expect that regional railroads and short lines will grow in strength and will continue to play a vital role in the national rail system.

In the past few years, we have seen many joint rate cancellations and gateway closings, as railroads have begun to test their freedoms to restructure rates and routes. Many railroads canceled rates and routes to encourage longer single-line hauls and to discourage use of inefficient routings. Some proposals were formulated in response to the earlier actions taken by competitors. Recently, however, we have noticed a slowing in new cancellation proposals. In addition, railroads' proposals are not simply being "rubber-stamped": the ICC is reevaluating a major cancellation case, and has also approved several requests from railroads for reciprocal switching privileges, over the protests of the other railroads involved.

I believe it is essential for the railroads to have the freedom to adjust rates and operations to improve efficiency and profitability, as long as the actions do not detract from the availability of safe and adequate transportation service. FRA does not condone use of regulatory freedoms to thwart competition or to retaliate against the actions of other railroads. We are on record as telling the railroads that they must exercise judgment and "statesmanship" in their business decisions. The slackening of cancellation proposals along with recent decisions at the ICC appear to indicate sensitivity to shipper concerns.

Shippers are part of our constituency at FRA, and I will do my best to see that their interests are addressed.

*Question 8.* During the last few years, there has been a move to reduce or eliminate Federal rail assistance programs. If confirmed as Administrator, what would you propose with respect to these programs? Given your prior experience with the Milwaukee bankruptcy, how do you view the need for these programs, and particularly the local rail assistance program?

Answer. The Section 505 and Section 511 loan guarantee programs have been very successful in accomplishing the tasks for which they were created. The Milwaukee Road and the Boston and Maine are just two examples of carriers that would not be in existence today but for the assistance received through the Section 505 program. Both programs however, are designed to handle major railroad restructuring. They relate to the needs of the major carriers, and those needs have diminished sharply with the progression of Class I consolidations. Deferred maintenance has now been virtually eliminated from the nation's main lines, and the enhanced financial standing of the Class I railroads has rendered it possible for those railroads to address the types of problems targeted by the 505 and 511 programs through conventional, private sector mechanisms. I am not aware of any major outstanding project which falls within the statutory criteria for Section 505 assistance.

I can personally attest to the impact of the Local Rail Service Assistance program. It was an essential mechanism in preserving service on one South Dakota and two Minnesota lines that are now profitable by any definition. If confirmed, I intend to use the resources of the Department to evaluate the role, if any, this program can play in future years, and I look forward to participating in the hearings the Committee intends to hold on the rail financial assistance program next year.

*Question 9.* In recent years, rail safety has become one of the most important functions of the FRA. If confirmed as Administrator, how do you intend to continue this focus? Are there initiatives with respect to hazardous materials and other areas that you would like to see the FRA take? In this regard, how do you envision FRA's use of the transportation test center at Pueblo, Colo.?

Answer. While other responsibilities tend to be more newsworthy, I don't believe that any responsibility before FRA is more important than its ongoing stewardship of railroad safety issues. I intend to be personally involved in the formulation of safety policies, and as indicated in my response to a previous question, I am committed to completing FRA action on its 8 pending rulemaking procedures by April of next year. I am also committed to maintaining the system assessment approach to safety enforcement, and will initiate a series of management initiatives designed to bring the number of safety inspectors on our rolls to the statutorily authorized 379 level.

Since joining the Secretary's staff as a special assistant, I have worked on expediting completion of the pending rulemaking proceedings. I have not yet determined

what other areas the Department could productively explore, but I will remain in close touch with the Committee as new directions evolve.

The Test Center is a more complex issue. I can assure the Committee of my commitment to successful culmination of the transfer process, as well as my belief that the facilities at Pueblo will play a major role in laying the groundwork for future FRA safety initiatives. As a special assistant to the Secretary, I have been reevaluating how the dollars allocated to Pueblo are being spent, and reassessing the relative priority of projects now in progress. I will attempt to extend that process to a zero-based budgeting of all of our Pueblo efforts—not for the purpose of reducing FRA activity in Pueblo, which I believe will remain at least at a constant level, but to insure that the dollars we have allocated are being spent on projects with the greatest public interest yield. If confirmed, I will continue the policy of focusing Federal research dollars on safety-related research.

*Question 10.* You have had significant exposure to high-speed rail technology, which has received a great deal of attention in recent years. What do you envision for the future of high-speed rail passenger service in this country? If confirmed as administrator, how would you perceive the role of FRA in this area?

Answer. High-speed rail passenger systems have brought significant benefits to transportation consumers in Japan, France, and, to a lesser degree, Great Britain. Recognition of those advantages has produced seven separate efforts to develop high-speed rail corridors in the United States. Each of the projects presumes private sector financing, or financing through a combination of private sector and interstate compact funds.

I recognize the interest of American consumers in the development of high-speed rail passenger systems, and I support private sector efforts to develop high-speed passenger systems. Private sector development of advanced, consumer-oriented technology is completely consistent with the philosophy of this Administration.

I intend to have FRA monitor the progress of the various U.S. projects, and serve as a repository for information on high-speed technological develoments. When requested to do so, I will also play a facilitative role in putting interested parties in contact with one another.

I do not believe there is a role for Federal financial assistance in the development of high-speed rail systems at the present time, for the following reasons:

The financial performance of the Japanese and French systems has been extremely strong. The Japanese claim double-digit returns on capital for more than a decade, and the French system (which was 49 percent privately financed) claims a 17 percent net return on investment for its first year of operation. These numbers suggest the possibility tht American high-speed rail systems can indeed be financed through the private sector, a possibility that forms the premise of each of the existing American projects. Those projects have not requested financial support, and it is impossible to justify Federal financial involvement as long as the prospect of private sector financing exists.

The benefit of each specific high-speed rail project is generally limited to a single state, or two adjacent states. If there is a role for government involvement to supplement private financial efforts, that involvement should come from the states which stand to benefit from the development of these systems. California's decision to guarantee $1.2 billion in bonds for the development of the Los Angeles to San Diego line is a case in point.

Federal involvement at this stage could ultimately impede the development of high-speed rail systems. High-speed rail projects' search for private financial backing, completion bonds, and support for feasibility studies is a "natural selection" process that will weed out the weaker project. The political process is far less adept at performing that "weeding out" function, and I believe decisions of this nature should be made on the basis of the projects' economics, rather than on the basis of political influence.

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NATIONAL ASSOCIATION OF RAILROAD PASSENGERS,
*Washington, D.C., November 4, 1983.*

Hon. BOB PACKWOOD,
*Chairman, Committee on Commerce, Science, and Transportation, Senate Russell Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: This is to indicate the strong support of our association for the nomination of John H. Riley to be administrator of the Federal Railroad Administration.

We have worked with John for several years and have the highest regard for his professional competence, his dedication to the improvement of rail passenger and freight service, and his effectiveness in working with others.

We trust your vote on his nomination will be one of the easiest decisions of your career!

The inclusion of this letter in the record of Mr. Riley's confirmation hearing would be much appreciated.

Thank you for your attention.

Sincerely,

ROSS CAPON, *Executive Director.*

[Whereupon, at 10:25 a.m. the hearing was adjourned.]

# NOMINATION—DEPUTY SECRETARY OF TRANSPORTATION

MONDAY, NOVEMBER 7, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
*Washington, D.C.*

The committee met, pursuant to notice, at 9:20 a.m., in room SR-253, Russell Senate Office Building, Hon. Ted Stevens presiding.

Senator STEVENS. Good morning.

We are here this morning for a hearing on the nomination of James H. Burnley IV, for the position of Deputy Secretary of Transportation.

We have statements from Senators East and Helms. Those will be printed in the record at this point.

[The statements follow:]

STATEMENT OF HON. JOHN P. EAST, U.S. SENATOR FROM NORTH CAROLINA

Mr. Chairman, I frequently find myself in agreement with the senior Senator from North Carolina, and today is no exception. It is with great pleasure that I join Senator Helms in endorsing the nomination of Jim Burnley to be Deputy Secretary of Transportation.

Jim's tenure as General Council of DOT has been brief, but he has already proven himself a valuable member of Secretary Dole's management team. He has helped guide the Department's activities on many fronts—including the sale of Conrail, implementing the Surface Transportation Assistance Act fo 1982, and responding to the Supreme Court's decision on passive restraints, to name just a few.

In each instance, he has demonstrated an impressive working knowledge of the issues, a strong commitment to the goals of the Reagan Administration, and a healthy respect for the proper role of the Congress in setting national transportation policies. I am certain that he will continue to demonstrate those qualities as Deputy Secretary.

But Jim is more than just a knowledgeable, dedicated and capable individual. He is a knowledgeable, dedicated and capable native of North Carolina—as is his boss, Secretary Dole. And, in my view, those are just about the best credentials one can bring to a major Administration position. Together, these two North Carolinians give DOT an outstanding line-up at the very top.

Jim Burnley is a fine attorney and administrator and a man of great integrity and character. He will serve this government well as Deputy Secretary of Transportation, and I take full pleasure in recommending his confirmation to this committee.

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STATEMENT OF HON. JESSE A. HELMS, U.S. SENATOR FROM NORTH CAROLINA

Mr. Chairman, six months ago, I had the pleasure of appearing before this Committee to endorse Jim Burnley's nomination as General Counsel of the Department of Transportation. I said then that the President and Secretary Dole had chosen wisely, and that I was confident Jim would do an excellent job in that very important position.

Well, I was right. Jim has done a fine job at DOT, not only in providing wise legal counsel, but also in helping to shape the policies and guide the operations of that

large Department. He has served as a key advisor to Secretary Dole on a wide range of issues, and his on-the-job performance has been impressive.

It appears that President Reagan has been impressed as well, so much so that he has now nominated Jim to serve as Deputy Secretary of Transportation. And I am here to say that, once again, I believe that President Reagan and Secretary Dole have chosen wisely.

I made a number of favorable comments about Jim's background this past May, and while I won't repeat them all, I certainly wish to reaffirm them. Jim is an able lawyer and competent administrator; he is of unquestioned integrity; he is devoted to his family and is active in civil affairs; and he cares deeply about this country and its people. He shares the President's commitment to revitalizing our national spirit and free enterprise system, to restraining Federal spending, and to limited but compassionate government. He is likewise committed to helping Secretary Dole improve the safety and efficiency of our transportation network, and to assisting her in administering DOT programs and overseeing the work of the Department.

One point does bear repeating. Jim is a disntinguished Republican from the great state of North Carolina, as is Secretary Dole. I believe the people of our nation will be well-served by having these two North Carolina Republicans in charge of DOT.

Jim Burnley has already served with distinction in the several posts he has held with this Administration, and I am confident he will continue to excel in this new position. He has assured me that he likes the idea of becoming Deputy Secretary—which is a good thing, because I assured him that I will be too busy next year to appear at any more of his confirmation hearings.

I will vote for Jim's confirmation with pleasure, and I strongly commend him to this Committee.

Senator STEVENS. It is my understanding that you have a statement, Mr. Burnley.

In the interest of expediting the hearing, we would ask you to proceed.

## STATEMENT OF JAMES H. BURNLEY IV

Mr. BURNLEY. Mr. Chairman, I very much appreciate your working this hearing into your always busy schedule this morning. I am pleased to have this opportunity to appear before the committee. I will keep my statement as brief as I can.

I would like, however, to very quickly note the very substantial assistance I have gotten from several of the members of the staff at the Department of Transportation, including Becky Gernhardt and Joe LaSala of our Congressional Affairs Office, and Jeff Miller, Nancy Hammond, John Collins, and John's staff in the General Counsel's Office in preparing for this hearing.

I also want to express my appreciation to Senators Helms and East who have submitted statements for the record in support of my nomination.

As you know, I joined the Department of Transportation last May as General Counsel. For the year prior to that, I served on the staff of the Deputy Attorney General. I have counted it as a privilege to serve in the Government, and I am very honored that the President has nominated me to be Deputy Secretary of Transportation. I want to assure you that with your approval, I will continue to do my utmost to carry my responsibilities.

During the 6 months that I have been General Counsel, I have had the opportunity to work closely, on a daily basis, with Secretary Dole. I have the greatest respect for her ability as well as her dedication to public service and her commitment to principle. I share her concern for the public safety, and fully support the priorities she has given to improvements in transportation safety. I know the members of this committee share these concerns, and I

look forward to working with you as we move forward toward better motor vehicle, aviation, rail, and maritime safety.

I am both encouraged by the progress we are making and challenged by the potential as yet unfulfilled. Last year's Surface Transportation Assistance Act has provided the resources necessary to keep pace with the completion of the interstate system and the rehabilitation of our roads and bridges. With funds flowing to the States at a rate nearly 50 percent greater than ever before, many long deferred highway projects are now under contract or construction. We can, in the years ahead, reverse the backlog of highway and bridge needs, and prevent further deterioration of America's roads. In so doing, we will make our highways safer and more efficient now and greatly reduce the cost of reconstruction in the future.

We are continuing to seek ways to enhance auto safety consitent with the proper role of the National Government in a Federal system. A few weeks ago, Secretary Dole announced the new center high-mounted tail lamp rule, which will dramatically reduce injuries and property damage at a cost of less than $7 per car. We are pursuing our campaign to increase the use of seatbelts, while expediting review of the passive restraint issue as ordered by the Supreme Court.

In aviation, we are rapidly nearing complete recovery of the air traffic control systems while proceeding with the first phases of the national airspace system plan. We are also in the midst of major rulemakings to improve cabin safety, and we anticipate further initiatives in this area in the near future.

Another issue I have been closely involved with is the sale of Conrail. We are committed to sell the railroad as an entity. We are actively considering several alternative methods of returning it to the private sector, including sale to the employees, a public offering, sale of a controlling interest to another railroad company, sale of a controlling interest to a nonrail company, or some combination of these alternatives.

Our primary goals remain to maximize return to the Government of its investment and to assure continued service to the region where Conrail operates by sale to new owners who have the ability to operate it efficiently.

With regard to economic deregulation in transportation industries, a matter of continuing interest to the committee, I am gratified by the progress being made toward regulatory reforms in the maritime industry. That issue, I believe, is being considered by the conference committee. In rail and bus industries, the reforms already achieved are benefiting shippers and passengers and providing the carriers with expanding market and profit opportunities.

We continue to believe that deregulation in the trucking industry and airline industry is working, that shippers and consumers benefit from the greater choice of rates and services resulting from competition. However, we are also sensitive to the need to monitor carefully the problems of transition to a deregulated environment.

Let me conclude my statement, Mr. Chairman, by assuring you that I welcome this opportunity to share with you my views, and to express my appreciation for your assistance and for the courtesies

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that members of the committee have shown me during my tenure as General Counsel.

I might also add that the staff of the committee has also been extremely generous with their time and advice, and most helpful to me.

I will be happy to answer any questions.

Senator STEVENS. Thank you very much.

I am sure the staff is familiar with your biographical statement, since you have been previously confirmed.

I don't want to get into the situation where we submit a bunch of questions to you, because we want to close this record at this hearing, so that we may file a statement with the recommendation for your confirmation, assuming the rest of the committee agrees, which I am sure they will.

North Carolina sort of owns the Department, doesn't it?

Mr. BURNLEY. Yes, sir, Mr. Chairman. I want to assure you that we North Carolinians are very sensitive to the needs of Alaska and its unique situation. As you know, Secretary Dole spent a good deal of time earlier this year in Alaska, and I hope to have the opportunity myself to visit. So I don't want the Alaskans to feel left out.

Senator STEVENS. Have you been up there?

Mr. BURNLEY. No, sir, I have not, and I would like to have the opportunity to do that in the near future, because as I prepared for this hearing, I have been struck by the number of very important issues that we have that are particularly important to Alaska. So it might be a good idea one day to go and see first hand.

Senator STEVENS. Little matters like railroads.

Mr. BURNLEY. Yes, sir.

Senator STEVENS. And Dutch Harbor.

Mr. BURNLEY. I am familiar with that one also.

Senator STEVENS. It might be a good reason for you to take a trip to Alaska.

What do you think your role is going to be after the sunset of the CAB, if that is not changed by Congress?

Mr. BURNLEY. We have a very active in-house review underway right now, and we are also in consultation with the other departments in the executive branch, and with the CAB on that matter.

Certainly, I think there is no question that we will have the responsibility in the international route awards process, and we are looking at mechanisms by which we can be sure that that is insulated from political interference. That will be our primary goal when we set up an in-house mechanism for handling those issues.

As to the antitrust immunity responsibilities, as you know those were sent to the Justice Department under the 1978 act. In 1981, as you are also aware, the Department submitted legislation with administration support, which would move those from Justice to DOT.

We are revisiting that issue, and we hope to reach a conclusion about how we at the Department feel in the very near future.

So I think, in terms of what our role ultimately will be, that there are still a couple of loose ends, particularly in the immunity area, but that without any question we are going to have to pick up the international route responsibilities. Unless there is a statutory

change, we will probably have to assume the consumer protection responsibilities, and we are looking at that as well.

Senator STEVENS. What about Senator Andrews' bill that he filed last week, are you familiar with that, on the filing of fares?

Mr. BURNLEY. I am familiar, Senator, only with the newspaper reports on it. I have not seen the text. But if I understand his basic approach, it would be a step back and would give the CAB or its successor some responsibilities in terms of policing of fares.

Our position is that the free market is the best policeman on fares. We are extremely concerned about the smaller communities, and we have been monitoring service to smaller communities very carefully during the process of deregulation. Although there are always exceptions to any generalization, we do feel that the record has been very, very good. A lot of smaller communities, in fact, are getting much better service than they had been getting prior to deregulation.

I do want to emphasize, on the one hand, our sensitivity to that aspect of the issue, but on the other hand, I think that once we have had a period of sustained economic growth, a few more months, and with the kind of dramatic turnaround we have seen in the aviation industry just in the last 2 or 3 months in terms of profitability and load factors, that there is every reason to think that the marketplace is going to work and work well, and that we do not need to take a step back.

Senator STEVENS. How long have you been at the Department of Transportation as General Counsel?

Mr. BURNLEY. I moved to the Department in March of this year, and I was there for 2 months before being sworn in during the confirmation period. So I have been at the Department for 8 months, and I have been General Counsel for 6 months.

Senator STEVENS. One reason that we wanted to have this confirmation quickly is that we want Secretary Dole to have the freedom to move around the country as she should.

Mr. BURNLEY. Well, sir, we have mixed views on that.

Senator STEVENS. Won't you be the operating officer while she is gone?

Mr. BURNLEY. Yes, sir, I will be. We have talked about that.

She has, as you know from your conversations with her, a very, very deep interest in the affairs of the Department and its business. She is very aggressive in providing leadership. So I think it will be my role to make sure that even though she will be out a good deal of the next year, that she is plugged into the process and that we are sensitive to her wishes in running the Department as she wants it run.

She doesn't intend to abdicate those day-to-day responsibilities. I suspect that we are going to burn the phone lines a good deal when she is out of town. That is the way it works now, by the way.

Senator STEVENS. In that regard, when she is gone, you are the Department's representative with OMB and Mr. Stockman, aren't you?

Mr. BURNLEY. Yes, sir, although she has his phone number, so even though she is out of town, she feels free to call him when we need her to.

Senator STEVENS. What is your relationship with OMB; have you had any dealings with them before?

Mr. BURNLEY. Yes, sir, particularly since joining the Department, I have had a good deal of contact with them.

In fact, at about the time I joined the Department, the Associate Director who handles our affairs changed, and the new appointee in that position, is a woman by the name of Constance Horner. I worked very closely with her at ACTION where we were both officials there during the first year of the administration. I know her very well and I have a good working relationship with her.

We, of course, do not agree on all matters. You would be astonished, I think, if that were true, but I have a very healthy working relationship there. Also, I have worked with Joe Wright, and I have had a number of contacts with Dave Stockman as well.

The channels of communication are good. As you know, again, we may not agree with them every day internally, and we try to sort out through the process, try to sort out our differences, and come to an administration view.

Senator STEVENS. Did you participate in the Department's action recently on passive restraints and airbags?

Mr. BURNLEY. Yes, sir, as General Counsel, I have had a good deal of day-to-day input into the efforts we have made to put an NPRM out.

Senator STEVENS. You are not now going to be in a position to try to administer the proposal that was made by the Department. Is that correct? Will that now be something you coordinate as the deputy?

Mr. BURNLEY. Well, sir, the way that the place works internally day to day, I will have a role in that, but when the new General Counsel comes on board—I would guess, the way the confirmation process goes, the FBI background check, it will be after the first of the year when that is all finished. I would expect that person to play the primary role on the legal side, and my role would be that of a step up toward the Secretary's office. She has taken a deep personal interest in this as well, so I expect that both she and I will spend a good deal of time on it next year.

Senator STEVENS. Have you been involved in her activities concerning the drunk driving laws of the Federal Government and the Nation?

Mr. BURNLEY. Yes, sir, I have taken an interest in that. As you know, we have had Governor Volpe chairing a commission that will be reporting to the President very shortly, later this month. We have also taken a very strong interest in encouraging on the local level the kind of toughening that the Secretary and I both very strongly believe needs to occur both in the penalties and the enforcement process.

Senator STEVENS. What do you believe about using incentives in the grant laws to achieve the goals we have articulated for drunk driving?

Mr. BURNLEY. Well, sir; we are doing that. As you know, legislation in 1982 set up such an incentive grant program. NHTSA and Federal highways both are working on using grants to encourage the States and to give them the resources to tighten up their procedures.

So we do believe that that is important, and we are in the process of doing that.

Senator STEVENS. What do you think DOT can do to assist the shippers and the small railroads in the concerns they have expressed concerning the ICC and competition among railroads. Are you going to be involved in that area at all?

Mr. BURNLEY. I have been, and I expect to continue to have some input. As you may know, last June, I filed on behalf of the Department of Transportation a memorandum with the ICC asking that they take a look at the class III railroad problems, and the captive shipper problem, separate and apart from the overall issue of boxcars. We are supportive of the thrust of that decision, and the memorandum I filed indicated very strongly that we were supportive of that, and we continue to be supportive, but we wanted to be sure that the ICC did not unintentionally do some things that they didn't mean to do, with adverse effects on shippers and shortlines.

I don't know that our particular filing made a major difference. I suspect that some activity on Capitol Hill probably had something to do with their recent decision to delay until July 1 deregulation as it applies to the shortlines. I am hopeful that during that period that we have got on shortlines that we can continue to work with the ICC to make sure that we, again, do not have some unintended effects.

On the whole, though, we do believe that boxcar deregulation makes sense. Our expectation is that many of the fears and concerns of the shortlines will be resolved through the negotiation process, with the class I railroads. That, we think, is the major source of the disenchantment of the shortlines at the moment.

Conrail in particular, in which you know we have a very strong interest, has signed a lot of contracts this fall. I would expect that by July 1 most of the shortlines will know for better or worse, what the relationship is going to be, and it will be much easier for all of us to assess the impact of the rule at that time.

Senator STEVENS. Have you had a role in the Conrail issue at DOT?

Mr. BURNLEY. Yes. I would guess, perhaps, I have spent more time on that than any other single issue day to day just in terms of the hours that I spent personally. I have had a role in that.

Senator STEVENS. Will you continue to have that function as you more into your new position?

Mr. BURNLEY. I am sure that I will, Senator, although I want to be sure that the new General Counsel plays a strong role as well. That is a major challenge, one of the two or three major challenges Secretary Dole feels that she faces in the next year.

We are looking at a number of different scenarios, as I mentioned in my statement. We continue to have some discussions from time to time with railroads and we are going to send our representatives from Goldman Sachs, and also John Riley, who had his confirmation hearing last week for FRA Administrator, as soon as he is confirmed, to make one more circuit, to make sure that we have not overlooked any potential buyers.

While doing that, we are continuing to talk with the labor association, and those negotiations are moving forward. We are refining the issues. We are also taking a serious look at the public offering

alternative. We think that there is probably a way to go that route, although there are some serious obstacles to it as a practical matter.

So day to day, I have spent a lot of time on that. I think that we will continue to have all of the senior leadership of the Department involved in that issue. It is a big issue, and no one of us is capable of figuring it out. So it is going to take all of the resources that we can bring to work through it and return Conrail to the private sector.

Senator STEVENS. The legislation dealing with Amtrak, have you been involved in that?

Mr. BURNLEY. I have been involved in it just in the work inside the Department, on the appropriations process. I must say that I am very impressed with the progress that Amtrak's leadership has made since 1981 in reducing the Federal subsidy that Amtrak needs. I do feel that there needs to be 50-percent cost recovery on the main lines, and if there are deficits on local lines or commuter services, the locality served needs to cover those deficits. We need to make sure that we make further progress toward having people who are served pay the major share of the costs.

I do think that it is unrealistic to expect that the Federal subsidy for Amtrak will disappear overnight. I will continue to work closely with Amtrak and the Federal Railroad Administration on mechanisms by which they can increase the ridership and the percentage of cost recovery that they can get through fares.

Senator STEVENS. What about the Alaska Railroad, do you see any hitches in that?

Mr. BURNLEY. I am delighted, Senator, that there don't seem to be any hitches. We have been very pleased with how that has progressed and we are looking forward to the reconvening of the Alaska Legislature. The last I heard that was going to be in January. Assuming that they are comfortable with the valuation number, which is slightly less than $23 million, we are looking forward to turning that one back to the State very soon.

Senator STEVENS. We have all been very worried and I think there has to be something more done to ensure the safety of highway transportation that is involved in hazardous materials transportation. Have you been involved in that, too?

Mr. BURNLEY. I had some meetings on the subject, and in fact just this weekend the senior leadership of the Department went together to the Airlie Foundation for a working weekend planning for next year, and we discussed this very issue during the weekend. Howard Dugoff who is the administrator has been working in recent months with the EPA to work through the entire list of potentially hazardous substances.

As you know, we have had some fairly stringent regulations about hazardous materials movement on the nuclear materials and on the explosive kinds of materials for some time. The question is now about the next category, what if anything do we need to do to either strengthen the Federal role there or, alternatively, give the States and locales more of a role.

We have a very active process underway right now working with the EPA. I expect that it is going to take quite some time for us to come up with that list of the second level of dangerous materials. I

think that probably, as Deputy Secretary, I will have occasion from time to time to work on that issue further with Mr. Dugoff and his staff.

Senator STEVENS. Do you think the Department of Transportation should be more involved in the regulation of transportation of hazardous materials?

Mr. BURNLEY. Sir, that is a difficult question, to the extent that we get into the issue of preemption of State and local rights.

Senator STEVENS. Most of it interstate transportation, isn't it?

Mr. BURNLEY. A lot of it is, although sometimes just because of the realities of life, you have to use roads other than the main arteries.

I must say that on the whole, we have to have a national and we do have national policy on regulating movements of hazardous materials, but we also have to be sensitive to the concerns of the States and locales, and there are some very difficult trade-offs there.

I have, for example, during the past months worked from time to time on the problems we have with the nuclear waste that the Canadians are generating. As you know, under the nonproliferation treaty, they are required to return that to Barnwell, S.C., for reprocessing. The only problem is that the States through which the trucks would have to move don't want those trucks. So the Canadians are in a very difficult position. They would like to return it as they are supposed to under the treaty obligation, but on the other hand they are told by the States along the Canadian border that they can't come through that particular State. In a situation like that, the Federal Government, obviously, has to step in and sort out the respective rights and obligations. I have been involved in the process. We have some proceedings underway now administratively, particularly directed at the situations in Michigan, New York, and Vermont, to try to solve that problem.

At all times, Senator, we have tried to work with the local leaders to make sure that we don't overlook the rights and interests of the States and locales. I am hopeful that in those three proceedings, we will ultimately work them out with the States involved. We will not have to take it to court.

Senator STEVENS. Are you satisfied that we are doing enough in terms of requiring financial responsibility for those involved in the transportation of hazardous materials?

Mr. BURNLEY. I think the answer to that question is yes, but, again, we have been reviewing that question internally and there are tradeoffs. We want to be sure that we have got people adequately protected against the possibility of a major tragedy. On the other hand, you can create artificial barriers to entry if you are not careful in terms of new companies being able to come in to participate in the movement of hazardous materials. So our emphasis continues to be primarily on the safety side to make sure that we don't have the kind of tragedies that result in the need for the insurance mechanisms that do now exist. But we have paid some attention to the question, since I have been at the Department, of whether there needs to be a strengthening in that area, and we have not yet come to any conclusion.

Senator STEVENS. You are going to have an increasing role with the Coast Guard.

Mr. BURNLEY. I would expect so, yes, sir.

Senator STEVENS. We have, since I have been on the Appropriations Committee, and particularly chairman of the Defense Subcommittee, tried to steer to the National Guard, to the Reserves, and to the Coast Guard funds for new equipment, and particularly for new vessels for the Coast Guard, or new equipment for them to deal with their law enforcement and antidrug role.

Mr. BURNLEY. Yes, sir.

Senator STEVENS. In 1981, we were able to get $300 million through the Congress for them to step up the appropriation for the Coast Guard. I have put in another $300 million in this year's budget. The only way that this got through in 1981 was that Secretary Dole's predecessor went to bat for us at OMB. Have you discussed that in the Department?

Mr. BURNLEY. Well, sir, I have discussed this briefly with Commandant Gracie. His personal view, as I understand it at the moment, is that they have adequate resources for the missions they are being asked to carry out. We certainly feel at the Department, and I think the Commandant shares this view, that inevitably there are some tradeoffs in the budget process. Our primary concern, in terms of the rate at which new capital expenditures are made for the Coast Guard, continues to be that, on the one hand, they have the resources they need to meet their multiple missions. They do have a lot of varying responsibilities. On the other hand, we do not want to be guilty of budget busting. In an era of $200 billion deficits, Secretary Dole has a lot of sensitivity in that area, so whether it be this particular situation, of Federal highways, or any of the other modes in the Department, we do closely scrutinize the budget requests, and there are tradeoffs that we have to make.

At this point, the Commandant does seem to feel that they are adequately funded.

Senator STEVENS. Then he needs to look at his military role, and so do you, and so does the Secretary. You are heading up a defense agency, in a time of emergency, the Coast Guard becomes part of the Department of Defense, and its role shifts over there. Yet, we find that people would like to impose the cuts that are imposed upon the civilian sector of our Government to the Coast Guard merely because in peacetime it is housed there in order that we can do things with it that we could not do if it was part of the Department of Defense. That is the only reason the Coast Guard is there. When it is involved in interdiction of drugs from abroad, in the boat people problem off of Florida, or the various problems of boat people coming in from the Orient, or the law enforcement of foreign fishing fleets that are off our shores. If we used the U.S. Navy in peacetime, it would cause some international incident. We use the Coast Guard as part of our national policy, but it is still part of the defense effort.

The Defense Department has had a real growth which is in excess of 7 percent so far. It will be somewhere around 4.5 percent now. The Coast Guard has had a decreasing appropriations level.

I want you to go to those battles with OMB and tell them that we have been modest. The next time, if this doesn't go through, I

will transfer the Coast Guard to the Department of Defense and give it the 7.5-percent increase, and they will catch up.

Mr. BURNLEY. Well, sir——

Senator STEVENS. I really think that it is unfortunate that the Coast Guard has to rely on people in peacetime to defend its position who don't adequately understand its total role. It is the guardian of our coast in a military sense. It cannot continue to be ignored. I truly tell you that if this $300 million is not defended, we will bring about some changes in the Coast Guard, and we will assign the Coast Guard to a department that will defend it. .

Mr. BURNLEY. Senator, I don't think, since Secretary Dole has become Secretary that there has been any question about her commitment to the Coast Guard or her willingness to go to battle for them. I do think it important to note that Commandant Gracie has complete access to her, and certainly has access to me as I move into my new responsibilities. We are going to continue to be very attentive to those needs. So I don't think that there is any need to worry about us hesitating in that regard.

Senator STEVENS. But if we put into the Coast Guard the amount that it should have in order to keep pace with the other defense agencies, that would be nearly $1 billion, and not $300 million. We are just trying to have it keep pace—barely. It does have an increased role in the drug field. It does have increased law enforcement role. It certainly has an increased role as far as the safety of lives at sea with the massive increase of boating in this country.

We just do not believe that it has had the facilities to keep up with that, and it has been primarily because of the Coast Guard's role as a civilian agency as opposed to a military agency.

I would hope that you would take a good look at it, and that you will defend it for us the way it should be defended. At the very least, if you won't defend it, let me know when the subject comes up.

Mr. BURNLEY. All right, sir, but I don't think there will be any need to worry about our interest and enthusiasm for the Coast Guard.

Senator STEVENS. Thank you very much.

[The statement, biographical sketch, and answers to questions of the committee follow:]

STATEMENT OF JAMES H. BURNLEY IV

Mr. Chairman: I am pleased to have this opportunity to appear before the members of this Committee. I have a brief statement and I will, of course, seek to answer all your questions as fully and as directly as I can.

I joined the Department of Transportation last May as General Counsel. For the year prior to that as you know, I served on the staff of the Deputy Attorney General. I count it a privilege to serve the Government, and I am honored that the President has nominated me for the post of Deputy Secretary of Transportation. Let me assure you that, with your approval, I will continue to do my utmost to carry out my responsibilities in the best interests of the American people.

During the six months I have been at the Department, I have worked closely—on a daily basis—with Secretary Dole. I have the greatest respect for her ability as well as her dedication to public service and her commitment to principle. I share her concerns for the public safety, and fully support the priority she has given to improvements in transportation safety. I know the members of this Committee share these concerns, and I look forward to continuing to work with you as we move forward toward better motor vehicle, aviation, rail and maritime safety.

I am both encouraged by the progress we're making, and challenged by potential as yet unfulfilled. Last year's Surface Transportation Assistance Act has provided the resources needed to keep pace with the completion of the Interstate system and the rehabilitation of our roads and bridges. With funds flowing to the states at a rate nearly 50 percent greater than ever before, many long deferred highway projects are now under contract or under construction. We can, in the years just ahead, reverse the backlog of highway and bridge needs, and prevent the further deterioration of America's roads. In so doing, we will make our highways safer and more efficient now, and greatly reduce the costs of reconstruction in the future.

We are continuing to seek ways to enhance auto safety consistent with the proper rule of the national government in a fedeal system. A few weeks ago, Secretary Dole announced the new center high-mounted tail lamp rule, which will dramatically reduce injuries and property damage at a cost of less than seven dollars per car. We are pursuing our campaign to increase use of seat belts, while expediting review of the passive restraint issue as ordered by the Supreme Court.

In aviation, we are rapidly nearing complete recovery of air traffic control system, while we are proceeding with the first phases of the National Airspace System plan. We are in the midst of major rulemakings to improve cabin safety, and we anticipate further initiatives in this area in the near future.

Another issue I have been closely involved with is the sale of Conrail. We are committed to sell the railroad as an entity. We are actively considering several alternative methods of returning Conrail to the private sector, including sale to the employees, a public offering, sale of a controlling interest to another railroad, sale to a nonrailroad company or some combination of these alternatives. Our primary goals remain to maximize return to the government on its investment and to assure continued service to the region where Conrail operates by sale to new owners who have the ability to operate it efficiently.

With regard to economic deregulation in the transportation industries—a matter of continuing interest to this Committee—I am gratified by the progress being made toward regulatory reform in the maritime industry. That issue, I believe, is being considered by the Conference Committee at this moment. In the rail and bus industries, the reforms already achieved are benefiting shippers and passengers and providing the carriers with expanding market and profit opportunities. We continue to believe that deregulation in the trucking and airlines industries is working—that shippers and consumers benefit from the greater choice of rates and services resulting from competition. However, we are also sensitive to the need to monitor carefully the problems of transition to a deregulated environment.

Let me conclude my statement, Mr. Chairman, by assuring you that I welcome this opportunity to share with you my views, and to express my appreciation for your assistance and for the courtesies that members of the Committee have shown me during my tenure as General Counsel.

Thank you, Mr. Chairman. I will be pleased to respond to your questions.

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BIOGRAPHICAL SKETCH OF JAMES HORACE BURNLEY IV

Address: 6605 Rosecroft Place, Falls Church, VA 22043.

Date and place of birth: July 30, 1948, High Point, North Carolina.

Marital status: Married to Jane Nady Burnley.

Name and ages of children: Jay Burnley, Age 12.

Education: Yale University, 1966–70, B.A. and Harvard Law School, 1970–73, J.D.

Employment record:

(a) U.S. Department of Transportation, Washington, D.C., General Counsel, 5/83 to Present.

(b) U.S. Department of Transportation, Washington, D.C., Special Assistant to the Secretary, 3/83 to 5/83.

(c) U.S. Department of Justice, Washington, D.C., Associate Deputy Attorney General/Special Assistant to the Deputy Attorney General, 4/82 to 3/83.

(d) ACTION/VISTA, Washington, D.C., Deputy Associate Director of ACTION/Director of VISTA, 3/81 to 4/82.

(e) Turner, Enochs, Foster, Sparrow & Burnley, P.A. (and predecessor firms), Greensboro, N.C., Shareholder and Vice-President, 1975–81.

(f) Brooks, Pierce, McLendon, Humphrey & Leonard, Greensboro, N.C., Associate Attorney, 1973–75.

(g) Brooks, Pierce, McLendon, Humphrey & Leonard, Greensboro, N.C., Summer Law Clerk, 1973, 1974.

Government experience: See 7 (a–d) above. I also served for several years as a member of the North Carolina Zoological Park Commission. I was appointed to this part-time position by the Governor.

Memberships: In the past, I have been Vice-Chairman of the North Carolina Young Lawyers Committee on Child Abuse, Chairman of the Greensboro Young Lawyers Committee on Child Abuse, a Director of the Greensboro Bar Association and a committee chairman for the Greensboro Kiwanis Club. I have been certified as a commercial arbitrator by the American Arbitrator Association. I was a member of that organization, as well as the American Bar Association, the Association of Trial Lawyers of America, the North Carolina Bar Association, the North Carolina State Bar, the Harvard Voluntary Defenders (while in law school) and the North Carolina Society of Washington. I am presently a member of the North Carolina State Bar and the Harvard Law School Association of Washington. Other organizations to which I made modest contributions or which published magazines I received may have considered me a "member"—such as the National Geographic Society or the Friends of National Zoo—but I have played no active role in such organizations.

Political affiliations and activities: Chairman, Reagan for President Committee of Sixth Congressional District of North Carolina; Chairman, Sixth Congressional District Republican Party; Chairman, Guilford County Republican Party; Chairman, Greensboro Young Republicans; Co-Chairman, Guilford County Ford for President Committee; officer, Yale Republican Club; member, Harvard Republican Club; member, North Carolina Republican Club of Washington; member of North Carolina Republican Party Central and Executive Committees.

I have made financial contributions during the last ten years to the Reagan for President Committee, Dole for President Committee, Helms for Senate Committee, East for Senate Committee, Lake for Governor Committee, Flaherty for Governor Committee, Ford for President Committee, Johnston for Congress Committee, Bemus for Congress Committee, Ritchie for Congress Committee, Carson for North Carolina Attorney General Committee, Guilford County Republican Party, Sixth District of North Carolina Republican Party, North Carolina Republican Party, Republican National Committee, Republican National Congressional and Senate Committees and a couple of dozen local candidates in North Carolina.

Honors and awards: While at Yale, I was selected for membership in a national honorary society for political science majors, and the Aurelian Honor Society. At Harvard Law School, I was selected to be Executive Editor of the Harvard, Civil Rights-Civil Liberties Law Review. I have also received various Republican awards, the most notable of which is Man of the Year in 1977 from the North Carolina Federation of Young Republicans.

Published writings: "Take My Agency—Please!", Conservative Digest, April, 1982; Trial Notebook for Use by Attorneys Appointed as Guardians Ad Litem for Abused and Neglected Children (North Carolina Administrative Office of the Courts, 1978); "Solicitation by the Second Oldest Profession: Attorneys and Advertising", 8 Harvard Civil Rights-Civil Liberties Law Review 77 (1973).

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## Questions of the Majority and the Answers Thereto

### SCHEDULE FOR DOT PROPOSAL FOR CAB SUNSET

*Question 1.* When does the Department of Transportation plan to send to the Committee its proposal for Civil Aeronautics Board sunset?

Answer. The Secretary has announced her intention to transmit to Congress next January the Department's proposal, including any needed legislation, to complete CAB sunset. This schedule permits the thorough analysis described in the response to Question 6 and, more importantly, recognizes that aviation leadership in the Congress is occupied with numerous other matters this year and can better address the January 1985 sunset question early in the next session.

### SPECIFIC DUTIES

*Question 2.* What will be your specific assignments as Deputy Secretary of Transportation?

Answer. My specific assignments at this point will include assisting the Secretary in returning Conrail to the private sector, continuing DOT's strong leadership role in the economic deregulation of transportation industries, and enhancing DOT's impact in the area of transportation safety. Each of these areas represents a strong interest and commitment from Secretary Dole. I will also supervise the implementation of the Secretary's management and policy decisions throughout the Depart-

ment. I have already been directly involved in each of these areas as General Counsel.

TOP GOALS

*Question 3.* What do you consider to be the top goals of the Department of Transportation in the next year?

Answer. I think that the top goal for the Department of Transportation is to increase transportation safety on land, on the sea, and in the air. We will continue to advocate further economic deregulation of the transportation industries, but this will not be done at the expense of transportation safety.

Another major goal is to sell the Alaska railroad and to transfer Conrail to the private sector as a single entity. Each of these activities offers a precedent-setting opportunity for the Federal government to reduce its role in the management of important transportation resources.

Finally, I believe that DOT must use its financial resources wisely to preserve and improve our nation's transportation systems. Our highway and aviation user fees give us powerful tools to enhance the transportation systems that are necessary to our economic well-being.

RELATIONSHIP WITH OMB

*Question 4.* Some of us have been concerned that the Department of Transportation fails to really tangle with the Office of Management and Budget over policy issues. Please comment on this. How do you view your relationship at DOT with OMB?

Answer. I believe that I have a healthy relationship with OMB. I am impressed with the analytical skills and the rigorous process that OMB uses to review DOT's budget, proposed regulations and our draft legislative proposals. OMB provides an important function for the President by providing a central clearinghouse for Administration decisions.

While I respect OMB's role and the integrity of the people there, let me assure you that neither Secretary Dole nor I would hesitate to appeal an OMB decision that intruded upon DOT's statutory responsibilities. I have worked closely with Secretary Dole on appeals that we have taken in the past—and won—and I expect that appeals will be necessary in the future. This "decision-and-appeal" process helps sort out the most important issues.

ADVISABILITY OF FURTHER CAB SUNSET LEGISLATION

*Question 5.* There are various issues in the Airline Deregulation Act of 1978 for which no provision was made for either transfer or sunset—such as postal, consumer and data collection functions. In addition, there are indications that there may be a need to revise other aspects of the Act with regard to the disposition of certain matters such as antitrust immunity. Is it your view that these issues are significant enough to require legislation next year?

Answer. We are in the final stages of deciding the content of any legislation to be transmitted to Congress. The Department is now studying the disposition of those domestic aviation functions not addressed by the terms of section 1601 of the 1978 Act, to see whether legislation is advisable. The Secretary will advise the Committee of our view as soon as possible.

DOT DECISIONMAKING PROCESS FOR CAB SUNSET

*Question 6.* I would appreciate if you would delineate for the Committee the steps or activities you have taken thus far in your decision-making process on the transfer of the CAB functions.

Answer. In remarks to the Department's "CAB Sunset Seminar" in early March of this year, the Secretary announced her intention to systematically analyze the critical issue of completing aviation deregulation in a manner that would best fulfill the goals of the "Airline Deregulation Act of 1978". This required the preparation and review of background materials and development of options for use by the Secretary and her new appointees, particularly the Assistant Secretary for Policy and International Affairs and the General Counsel. Additionally, continuing, informal discussion has occurred with the other interested government agencies, notably the Civil Aeronautics Board and the Justice Department, to assure a cohesive and fully justified Administration position. Finally, we have been open to, and have held meetings with groups who have an interest in CAB sunset.

EXPENDITURE FROM THE AVIATION TRUST FUND

*Question 7.* Last year, it was the Administration's view that users should pay for modernization of our national air transportation system and Congress approved higher user taxes to support the planned program. The FY 1984 appropriation for airport and airway expenditures was far short of the authorization. Will the Department request full funding for the programs next year, including a request for the money not requested this year? If the money isn't requested or if an appropriations shortfall becomes apparent again, don't you agree the aviation taxes should be reduced to avoid a huge buildup in the aviation trust fund?

Answer. Because the President has not made final budget decisions, I would prefer not to speculate on the Department's intended request to Congress for FY 1985 "Facilities and Equipment" (F&E) budget authority. However, the Secretary has made clear in public remarks that she believes the levels established in the "Airport Improvement Act of 1982" for FY 1985 are fully justified.

The balance in the Aviation Trust Fund reflects in part the decision not to making funding available at the levels authorized for F&E and Airport grants, but also reflects the inability to derive any "Operations" funding from the Trust Fund contrary to what was contemplated in enacting the Airport Improvement Act. User fees underlying the Trust Fund were established at levels providing more than $1 billion annually for Federal Aviation Administration operations. In fact, we have been directed by the Appropriations Committees in their reports on the fiscal year 1984 Appropriations Acts to address this question. In our view, while this question and others remain outstanding, it would be unwise to adjust the user fee mechanism.

MARITIME REGULATORY REFORM

*Question 8.* Secretary Dole has been an effective advocate of the Shipping Act of 1983. As you know, the Senate and House are in Conference to resolve the differences between the two versions. Can we expect the Secretary and your office to continue to strongly advocate passage of the Shipping Act?

Answer. Yes; regulatory reform of the international ocean commerce transportation system of this nation is one of the top priorities of the Department of Transporation and of the Administration as a whole. Such reform continues to be an integral part of the Administration's maritime policy because it is so essential to reestablishing the economic health of our merchant marine. I wholeheartedly endorse the pledge made by Secretary Dole earlier in the year that ". . . the Department of Transportation will work as long and hard as needed to obtain a good maritime regulatory reform law." I have personally spent a great deal of time working on this issue since joining the Department.

CARGO PREFERENCE

*Question 9.* It seems that many departments of the U.S. government are trying to avoid the requirements of the cargo preference laws. It is apparent that Secretary Dole is a lonely advocate of those laws in the Cabinet. Will she be a strong advocate in the future?

Answer. Yes; the Secretary will continue to support and enforce the existing cargo preference laws. Reserved cargoes generated by our cargo preference laws play an important role with respect to the health and well-being of the United States-flag merchant marine.

TRUCKING DEREGULATION

*Question 10.* Legislation to deregulate the trucking industry has been sent out of the Department for Administration review. In addition, Senator Packwood recently introduced legislation which would accomplish the same goal. What is your opinion of such legislative efforts? Do you support further regulatory reform of the trucking industry?

Answer. I support further regulatory reform of the trucking industry, although I believe that we must be sensitive to the need to monitor carefully the problems of transition to a deregulated environment. The major issue for trucking deregulation is the question of timing; that is, whether a coalition of support for further trucking deregulation can be built by delaying the sunset date for single-line antitrust immunity. Secretary Dole has promised that DOT would work closely with Senator Packwood on this important issue, and I look forward to being an active participant in this effort.

REGULATORY PHILOSOPHY

*Question 11.* How would you characterize your regulatory philosophy, particularly with respect to the motor carrier industry?

Answer. I believe that there should be a strong governmental presence in safety regulation consistent with the principles of federalism. When interstate commerce necessitates a Federal role, I support Federal regulation in this area.

Philosophically, I do not support exemption of domestic transportation from the antitrust laws. I do not support the economic regulation that governments have imposed to act as a surrogate for the marketplace. However, I recognize that this pure philosophical stance must be tempered by the reality of 100 years of economic regulation, and that we must move carefully to obtain the benefits of further deregulation.

NHTSA SAFETY STANDARDS

*Question 12.* In your view, what role should the Office of the Secretary play in the promulgation of motor vehicle safety standards by the National Highway Traffic Safety Administration?

Answer. I know that Secretary Dole is pleased that the Senate has confirmed Diane Steed to be the Administrator of the National Highway Traffic Safety Administration (NHTSA). The Secretary and I have both been impressed by Ms. Steed's integrity and commitment to vehicle safety.

I beleive that the Office of the Secretary should rely heavily on the expertise of Ms. Steed and her staff in the development of motor vehicle safety standards. However, safety is such a major concern for Secretary Dole that I think that it is crucial that the Office of the Secretary be closely involved in the development of all major standards. Additionally, NHTSA's activities should continue to be scrutinized through the oversight and review process which occurs with respect to each DOT administration.

PASSIVE RESTRAINT

*Question 13.* What is your opinion of the effectiveness of passive restraints in general, and airbags in particular?

Answer. As you know, this issue is currently in rulemaking, and so my comments must be limited. The effectiveness of an occupant restraint device refers to the ability of the system, when used, to reduce injuries or fatalities. Our estimates of effectiveness, therefore, are based on a properly buckled belt or deployed airbag. We estimate that a manual belt is about 50 percent effective for reducing fatalities, 65 percent for reducing moderate to critical injuries and 11.5 percent for minor injuries. For some types of automatic belts, we have estimated that their effectiveness for preventing fatalities is in the range of 39 to 55 percent. This data is based on the VW belt only, and due to the limited available data, there are no figures for reduction in injuries. With respect to airbags, occupants must use a lap belt to supplement the airbag to obtain maximum protection in not only frontal, but also side and roll-over accidents. Based on reassessments of previous analyses, which were based primarily on laboratory results and engineering judgment, the Department believes that previous estimates of airbag effectiveness may have been overstated. In estimating benefits for airbags for our current rulemaking, the Department assumed that; (1) the effectiveness of airbags plus lap belts in preventing serious to fatal injuries may fall in the range of 20 to 44 percent; (2) for moderate to critical injuries, the range is between 20 and 50 percent; and (3) lap belt usage rates would be the same as currently observed seatbelt usage. Benefits are calculated by considering estimated usage rates and effectiveness figures together. Of course, as usage rates decline, benefits are lower as well.

Much more detail on this subject, as well as on the cost and benefits of the various occupant restraint devices, is contained in our occupant crash protection notice of proposed rulemaking that was issued on October 14, 1983, and the supporting preliminary regulatory impact analysis. We have asked for public comment on a broad range of issues, including the effectiveness of these devices, and I can assure you that the Secretary and I will be reviewing the matter very carefully before a final decision is made.

INCENTIVE GRANTS

*Question 14.* Do you support the concept of federal incentive grant programs to encourage states to enact laws dealing with such major problems as drunk driving?

Answer. I fully support the implementation of the new "alcohol traffic safety program" (23 U.S.C. § 408) that the Congress enacted last year. This program created a new incentive grant program for States to encourage them to strengthen drunk driving laws and expand and improve existing drunk driving programs. I am pleased to report that DOT acted quickly to implement this program. The procedures are already in place to deliver grants to States.

One of the advantages of this new program is that it highlights a specific problem. However, I would not support a proliferation of new statutory incentive programs because this would divert the States' attention from the existing focus of § 408. It could also have serious budgetary consequences.

SAFETY REORGANIZATION

*Question 15.* The Department has submitted legislation to the Congress which would reorganize various safety functions within DOT. What specific safety benefits do you expect from such a reorganization?

Answer. I can assure you that we have not proposed this safety reorganization merely for the sake of reorganizing. We are proposing the reorganization to enhance the safety activities of DOT. Specifically, the benefits are:

*(1) Effective oversight by the Secretary, the Congress, and the public.*—Consolidation will provide an opportunity to examine highway-related safety programs in a broad, coordinated context and to assign line accountability—through a single Administrator—for a comprehensive program to improve highway safety.

*(2) Consistent regulatory policy.*—Consolidation will ensure that regulations governing the design and performance of motor vehicles are integrated to reflect engineering, operational, and enforcement concerns. Also, the regulatory process would benefit from the interaction of experienced staffs from modes which have traditionally followed different but complementary approaches.

*(3) Increased visibility and improved constituent relations.*—The consolidated organization will pull together, in a highly visible unit, functions and interactions with constituents that are now distributed in two DOT administrations, and will facilitate more broadly-based and balanced Departmental relationships with the many affected government, business, labor, and consumer constituent groups.

SAFETY REORGANIZATION SUPPORT

*Question 16.* Which industry and consumer groups support DOT's reorganization effort?

Answer. We have support for the concept of reorganizing these safety functions from a wide spectrum of groups representing consumer groups, State agencies, and organized labor. However, a number of other groups are maintaining a position of neutrality on the reorganization until they learn the detailed organizational structure that will be used for the new Safety Administration. While these administrative details do not actually have to be resolved before the legislation is enacted, we are working closely with these groups to resolve their concerns. I hope that we can shortly provide you with a comprehensive list of supporters.

APPOINTMENTS

*Question 17.* Do you expect to participate in the appointments process for the various transportation agencies, such as the ICC and the NTSB?

Answer. The President alone has the authority to nominate individuals to serve on the independent agencies. However, I expect that DOT will continue to be involved in the appointments process on at least two levels. First, we are often able to suggest individuals who have particular skills that would make them well suited for a post dealing with transportation issues. Second, as a Cabinet officer, Secretary Dole is asked to give her recommendations to the President. I expect to participate in this process.

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QUESTIONS OF SENATOR LAUTENBERG AND THE ANSWERS THERETO

*Question.* The sale of Conrail is of the utmost importance to the States of the Northeast and Midwest and shippers in those States dependent on Conrail for rail freight service. By what means is the Department of Transportation receiving input from these States and shippers to guide its deliberations?

Answer. Because the sale of Conrail is perceived to be a "federal" project, much of the input from the states and shippers in the Northeast and Midwest tends to be channeled to the Department through individual Members of Congress. Neverthe-

less, the Department has also received direct comment from a number of state and shipper interests. All of these communications are carefully considered and responses, when appropriate, are prepared and forwarded. A list of those entities commenting during the last year is set forth as follows: New York State Department of Transportation (including the Statewide Taskforce on the Sale of Conrail); Port Authority of New York and New Jersey; Various Pennsylvania State legislators; Economic Development Council of Northeastern Pennsylvania; Erie County (NY) Industrial Development Agency; Monroe County (PA) Board of Commissioners; Office of the County Executive, Broome County (NY); Agway, Inc., Syracuse, NY; and Anchor Hocking Corporation, Lancaster, OH.

In addition, state and shipper concerns and interests are conveyed to the Department through its Regional Representatives, particularly the Representative responsible for DOT Region I, II, and III, which encompass the Northeast states through which Conrail runs. FRA officials have also attended a number of meetings with state and shipper representatives at which the status of Conrail was actively discussed.

*Question.* The administration maintains that appropriations for the U.S. Rail Association should be deferred and that the agency should be reduced to some 14 employees. Is not USRA's role clearly outlined in the 1981 Northeast Rail Service Act and does not that legislation assume USRA's monitoring of any sale agreement well into 1984? What role, if any, does the administration see for USRA in the sale of Conrail?

Answer. USRA's role is outlined in the Northeast Rail Service Act of 1981 (NERSA), but that role does not include the monitoring of any sale agreement.

What Section 218(a) of the 3R Act, as amended by Section 1150 of NERSA, does charge USRA with is the submission of "periodic reports" on the progress of any sale. In view of the DOT's commitment to keep Congress informed of progress on the sale, we see no need to maintain a large staff at USRA to prepare progress reports that can be little more than echoes of the information regularly provided to the Congress by DOT.

We regard as very real the distinction between monitoring a sale agreement and reporting on progress, particularly since under certain types of dispositions, such as a public offering of Conrail stock, there may not be a "sale agreement" until only hours before the actual sale.

Section 218(b) of the 3R Act, as amended by NERSA, does call for USRA to prepare "a final report on the transfer agreements . . . under Section 407 of the 3R Act." Such transfer agreements, however, are prepared only in the event that Conrail is to be broken up and its assets sold. Because Conrail's continuing profitability has made such an asset disposition extremely unlikely, we see no reason to maintain a sizable USRA staff to deal with a situation that no one expects to occur. Furthermore, should an asset disposition ever become a geniune possibility, USRA would have more than sufficient time to hire the necessary staff.

As to USRA's role in the sale of Conrail, the Administration subscribes to those tasks required by NERSA:

(1) Section 403(b) of the 3R Act, as amended by NERSA, requires that "as soon after November 1, 1983, as the necessary information is available", USRA perform a second profitability determination of Conrail. That determination is now in the process of being formulated and is expected to be completed and submitted to the USRA Board for action at the December 15, 1983 Board meeting.

(2) If after June 1, 1984, the Secretary determines that she is unable to sell Conrail as an entity, she may so notify the USRA Board, which shall then approve or disapprove such determination. The Secretary, however, need take this step only if she has concluded that a stock sale is not possible and that an asset transfer is necessary. As mentioned above, Conrail's steadily improve performance over the last several years makes an asset sale highly unlikely. In the event, however, that the Secretary should have to seek such approval from the USRA Board, we believe that the USRA Board members themselves, calling on their own staffs (i.e., GAO, ICC, DOT, and in the case of the USRA Chairman, a reduced USRA staff) can make such an informed decision without the need of a large USRA staff.

(3) As mentioned above, Section 218(a) of the 3R Act, as amended by NERSA, requires periodic reports from USRA on the progress of the disposition, including "an evaluation of the performance of the Corporation . . ." Because Conrail regularly submits its financial reports to USRA, we believe that a reduced USRA staff can more than adequately fulfill this function.

(4) Finally, Section 218(b) of the 3R Act, as amended by NERSA, requires a "final report on (any) transfer agreements." As indicated above, we regard the possibility

of an asset disposition, and therefore the need for such a final report, as extremely unlikely.

*Question.* In the administration's view, at what point in the sale process would the Congress have occasion tc approve or disapprove of DOT's action? Is additional legislation necessary to clarify the Congressional role in light of the recent court decision regarding legislative vetoes?

Answer. The Administration has been, and continues to be, committed to keeping the Congress informed of the progress regarding the sale of Conrail. Meetings have been held regularly, and whenever requested, with Members of Congress and their staffs. We intend to continue this informal process to keep the Congress aware at all times of our progress.

On a more formal level, Section 401(a) of the 3R Act, as amended by NERSA, requires that the Secretarty submit to the Congress any plan for the sale of Conrail. In view of the recent Supreme Court decision in the *Chadha* case, the Department has reviewed Section 401(a) and concluded that the unconstitutional legislative veto provision of NERSA is severable from the rest of the Act, but that the Secretary has a continuing obligation to submit to the Congress any plan for the sale of Conrail. The plan would be before the Congress for a 60 calendar day period, during which time the Congress could, by enactment of a law, take whatever action it deemed appropriate with regard to the plan.

[Whereupon, at 9:50 a.m., the committee adjourned.]

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# NOMINATIONS—DEPARTMENT OF TRANSPORTATION

THURSDAY, NOVEMBER 10, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
*Washington, D.C.*

The committee met, pursuant to notice, at 10:04 a.m., in room SR-253, Russell Senate Office Building, Hon. Ted Stevens presiding.

Senator STEVENS. This is the time set for the hearing on the nomination of Mari Maseng to be Assistant Secretary of Transportation for Public Affairs.

Senator Thurmond, we're happy to have you here.

## STATEMENT OF HON. STROM THURMOND, U.S. SENATOR FROM SOUTH CAROLINA

Senator THURMOND. Thank you, very much, Mr. Chairman.

It is a pleasure to introduce to you Miss Mari Maseng, who has been nominated by President Reagan to be Assistant Secretary of Transportation for Public Affairs.

A native of Columbia, S.C., Miss Maseng earned her B.A. degree in journalism from the University of South Carolina. While a student at the university, she was named outstanding senior, a member of the Mortar Board and was listed in Who's Who in America's Colleges and Universities.

Miss Maseng began her professional career with the Charleston Evening Post. As a reporter she covered the metropolitan news, local government and politics, crime, special features, and investigative stories.

In 1978, Miss Maseng joined my Senate reelection committee staff as campaign press secretary. In this capacity, Miss Maseng demonstrated to me her ability to handle a variety of situations with the expertise of a veteran.

After the election in 1978, Miss Maseng moved to Washington to be campaign press secretary for the Presidential campaign of Congressman Philip Crane. In June 1979, she was appointed as staff director of the Presidential campaign for Senator Bob Dole. At the conclusion of the Republican National Convention in 1980, Miss Maseng became special assistant for media planning to the chairman of the Reagan-Bush Committee.

After the election of President Reagan in 1980, Miss Maseng worked closely with Mrs. Reagan as her transition press secretary.

Upon the inauguration of President Reagan in 1981, Miss Maseng was appointed as a speechwriter for the President.

Mr. Chairman, I was pleased to learn that the President had nominated Miss Maseng to the post of Assistant Secretary for Transportation for Public Affairs, following her recent appointment as Director of Public Affairs at the Department of Transportation. Miss Maseng is a most capable young woman, and I know that she will do an outstanding job for the country in this new position, as she has done so well in the past. She is a remarkable person who will continue to serve as a role model for all young women.

Miss Maseng is a conscientious worker and someone whom I am very proud to know, and to have had as a member of my staff. I commend her to you, and appreciate your giving me the opportunity to speak in her behalf today.

Senator STEVENS. Thank you, very much, Senator.

Senator THURMOND. If you will excuse me, I am due on the floor for the Civil Rights Commission matter.

Senator STEVENS. Yes, sir, I know you are.

Senator THURMOND. Thank you, very much.

Senator STEVENS. Thank you.

Miss Maseng, we are delighted that the Secretary has elevated this position to an Assistant Secretary level. I understand you have submitted answers to the questions that were propounded to you by members of the committee. We will put them in the record. To my knowledge there are no further questions to be asked, and that's it.

Ms. MASENG. Thank you, very much, Senator.

[The statement, biographical sketch, and answers to questions of the committee follow:]

STATEMENT OF MARI MASENG

Mr. Chairman, I welcome this opportunity to appear before your committee as the President's nominee for Assistant Secretary for Public Affairs at the Department of Transportation. With your permission, I will briefly read my opening statement and then answer any questions you may have.

I am honored by the President's and Secretary's confidence in me. I believe strongly in the public's "right to know," and the need for government to be as open as possible. As Assistant Secretary for Public Affairs, my first obligation would be to serve that purpose by informing the public on a timely basis, encouraging openness at all levels. To do this, it will be necessary to work closely with the Secretary and the policy-making staff to be fully informed of the issues and able to represent them accurately to the media.

I would consider it my obligation, as well, to reflect to the Secretary the concerns and priorities of the public as expressed in the media regarding transportation planning.

As a former reporter, I understand the importance of assisting members of the news media obtain the information they need to inform their readers, viewers or listeners. Neither the government nor the public is well served by public affairs practices that seek to distort the facts, shield public officials from the press or withhold information to which the people of our country are entitled. While my office clearly has a responsibility to support Administration programs and objectives, our primary duty is to impart factual, accurate, and timely information to the public through the press.

As a media counselor and press secretary for several of today's outstanding political leaders, I have learned from another perspective the best methods of assistance a public affairs office can provide. And, as a speechwriter to President Reagan, I became familiar with a wide variety of contemporary issues and national policies, including those relating to transportation. I have greatly increased my understand-

ing of the transportation concerns facing this Committee, the Congress and our country during the two months I have served as Director of Public Affairs at DOT.

Mr. Chairman, my academic and professional credentials are outlined in the biography previously provided. I would simply add that my background reflects what I believe to be a solid foundation in three important areas: working journalism experience, public affairs direction, and public policy participation.

I look forward to assuming those responsibilities with your concurrence and to serving President Reagan and the American people more effectively as Assistant Secretary of Transportation for Public Affairs.

That concludes my statement. I will be pleased to answer your questions.

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### Biographical Sketch of Mari Maseng

Address: 4200 Cathedral Avenue, N.W., Apartment No. 1101, Washington, D.C.

Date and place of birth: March 15, 1954; Chicago, Illinois.

Marital status: Single.

Names and ages of children: None.

Education: University of South Carolina, Bachelor of Arts in Journalism.

Employment record: Charleston Evening Post—1/76–3/78, Charleston, S.C., Reporter, Re-elect Thurmond Committee—3/78–11/78, Columbia, S.C., Press Secretary, Crane for President Committee—1/79–5/79, Bailey's Crossroads, Va., Sr. Press Aide, Dole for President Committee—6/79–8/80, Alexandria, Va., Staff Director, Reagan-Bush Committee—8/80–11/80, Arlington, Va., Spec. Asst. to Chairman, Office of the President-Elect—11/81–1/82, Washington, D.C., Press Officer, The White House—1/81–9/83, Washington, D.C., Presidential Speechwriter, U.S. Dept. of Transportation—9/83 to Present, and Director of Public Affairs/Deputy Assistant Secretary for Public Affairs.

Government experience: Office of the President-Elect; Presidential Speechwriter; and U.S. Dept. of Transportation.

Memberships: Sigma Delta Chi, Society of Professional Journalists; First Presbyterian Church of Columbia, S.C.; Chi Omega Fraternity.

Political Affiliations: Re-Elect Thurmond Committee, 3/78–11/78, Press Secretary, Crane for President Committee, 1/79–5/79, Senior Press Aide, Dole for President Committee, 6/79–8/80, Staff Director, Reagan/Bush Committee, 8/80–11/80, and Special Assistant to Chairman.

Honors and Awards: Outstanding Young Woman of America—1981, 1982, and 1983; Who's Who in American Women 1982; Who's Who in Washington, D.C., 1982, Southern Heritage Foundation.

Published writings: Articles written while employed as a reporter for The Gamecock and Garnet and Black at the University of South Carolina and for the Charleston Evening Post in South Carolina.

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### Questions of the Minority and the Answers Thereto

*Question.* What will be your basic responsibilities as Assistant Secretary for Public Affairs? How will they differ from the existing Office of Public Affairs? What were the principal accomplishments of the Office of Public Affairs in FY 1983 and what are your expectations in FY 1984?

Answer. My responsibility will be to advise the Secretary on all matters relating to communications with the press and the public, to work with the other Assistant Secretaries in formulating policy and to assure that public concerns and attitudes are reflected in Department plans and proposals. At the present Director level, the Public Affairs officer has less access and influence, handicapping the lines of communications both internally and with the press. Elevating the position to the Assistant Secretary level will both strengthen relations with the press, and assure that the public perspective is reflected in the department's deliberations. As to accomplishments, the Office of Public Affairs, through an active program of Secretarial speeches and press relations, substantially increased public awareness of drunk driving and other transportation safety concerns in 1983. During the next year we expect to involve the private sector and the people even more fully in safety-related issues, including the rulemaking on automatic restraints for passenger car occupants. We will further advise the public, through the media, of pending legislative issues as well as the progress Congress and the Administration are making in meeting transportation needs.

*Question.* Currently in the Department of Transportation, there is a public affairs office for each mode of transportation. How will your office interface with these offices and what authority will you have over these offices?

Answer. Staffing in the public affairs offices of the various transportation administrations has been reduced since 1981. These offices perform important services to the public and the press by providing detailed data, often of a technical-scientific nature, and other information on matters relating to their specific responsibilities. I expect those services to continue. I plan to re-institute the Public Affairs Council, a twice-monthly meeting of the directors of the individual transportatioin mode offices. This more formal coordination will enable a more complete exchange of information, reducing duplication of effort and making better use of our resources. Within our office we have instituted a "beat" system through which staff members are responsible for day-to-day contact with the nine modes, responsible for constant liaison with them on policy and informational questions. As Assistant Secretary, I would not exercise direct authority over the modal Directors, but I would expect them to support the Department goals and programs, just as I would offer them the support of my office.

*Question.* Currently, the Department of Transportation does not have an Assistant Secretary for Public Affairs. As a matter of fact, in prior budget submissions the Department has indicated that consolidation of the functions of the Office of the Secretary has resulted in efficiencies and has not impaired the ability of the Office to perform essential functions. Has that situation changed? What circumstances necessitate elevating the Office of Public Affairs to the level of Assistant Secretary at this time? What does this portend for the future as regards the authority of the Assistant Secretary for Public Affairs, the personnel and budgetary requirements?

Answer. I believe that in elevating the Public Affairs position to the Assistant Secretary level, the Secretary is indicating the importance she places on open and timely communication with the public. Federal transportation policies, by their nature, impact directly and often quickly on the daily lives of the American people. It is essential that the public perception of government's intention be assessed accurately, and that public opinion be incorporated into policy deliberations at the highest levels. The Public Affairs office can best serve the public and the government by contributing to and being a full partner in that process. At the level of Assistant Secretary, the public affairs counselor will be among the Secretary's most senior advisors. Greater weight will be attributed to public affairs recommendations and greater authority will be attributed to the person in charge. All of this will enhance the basic function of the office and better serve the public. In terms of resources, I envision no reason to enlarge the staff or increase the budget. In 1980, the first year of the Reagan Administration, the authorization was reduced to 38—with 33 people actually in place. Today we have 27 positions filled against an authorized level of 29. Our budget, I might add, excluding salaries, was reduced from $418,000 in 1980 to $160,000 in 1981—and was $110,000 in 1983. This was increased to $204,000 for fiscal year 1984 because of the addition of funds to cover drunk driving informational programs. I do not intend to ask for any changes in our authorized staffing level of 29 nor any significant changes in our budget.

*Question.* Creation of the post of Assistant Secretary of Transportation for Public Affairs does not require an amendment to the Department of Transportation Act. However, for the record, will you please indicate whether this post has ever been filled before and what other cabinet level agencies currently have an Assistant Secretary for Public Affairs?

Answer. When the Department was created, a position of Assistant Secretary for Public Affairs was established as one of the five Assistant Secretarial designations. The post was filled at that time but was later reduced to Director level to make an assistant secretary position available for another purpose. At present four Cabinet level agencies[1] have Assistant Secretaries for Public Affairs. As one of the larger Departments both in terms of budget and personnel, and with nine separate administrative modes requiring public affairs coordination, Transportation would appear to merit this status.

Senator STEVENS. We will now turn to the nomination of James L. Emery to be Administrator of the St. Lawrence Seaway Development Corporation.

Senator D'Amato, we are happy to have you here. I understand that Congressman Kemp and other members of the New York dele-

[1] Defense, Treasury, State, Health and Human Servcies.

gation are here. We will be happy to recognize them as they come in.

Please proceed, my good friends.

## STATEMENT OF HON. ALFONSE M. D'AMATO, U.S. SENATOR FROM NEW YORK

Senator D'AMATO. Mr. Chairman, I am delighted to be here and I thank you for this opportunity, and I am delighted to be able to join with Congressman Kemp in presenting Jim Emery for the position of Administrator of the St. Lawrence Seaway and Development Corporation.

Mr. Chairman, I am going to ask that the full text of my remarks be included in the record as if read in their entirety.

Let me say that I have known Jim Emery for 20 years. I know him as a capable administrator, a capable legislator, a person who has had the kind of administrative experience and ability that will stand him in good stead with this position. He is a man who is intimately aware of the problems of the St. Lawrence Seaway, and I think will bring an innovative, creative capacity to deal and to invigorate the St. Lawrence Seaway. Indeed, not only is he a good friend, but an outstanding, capable administrator, starting from the position of sheriff in his local county, working himself up to become minority leader of the New York State Assembly and a Lieutenant Governor candidate. A fine businessman, a man who has got the experience and the dedication necessary to carry on and to, if anything, revitalize the seaway while protecting the important interests of those States that are on the Great Lakes.

Mr. Chairman, indeed it is a privilege for me to be here and to present the President's nominee for this position, Mr. Jim Emery.

[The statement follows:]

STATEMENT OF HON. ALFONSE M. D'AMATO, U.S. SENATOR FROM NEW YORK

Mr. Chairman, it is my pleasure to present to the committee, Mr. James L. Emery of upstate Geneseo, New York, who has been nominated by the President to be Administrator of the St. Lawrence Seaway Development Corporation.

Mr. Emery has had a long and distinguished career in public service, having devoted over 20 years to meeting the concerns of the people of New York. Appointed in 1960 by the late Governor Nelson Rockefeller to be sheriff in Livingston County, New York, he ran successfully for the State legislature in 1964 and went on to serve 18 years in the assembly. After only five years in office, he became deputy minority leader.

In 1978, his colleagues elected him assembly minority leader with responsibility for administering a $6.5 million budget and 600 legislative employees. As the top elected member of his party, he was a principal participant in all budget, legislative, and administrative negotiations between the State senate and assembly leadership and the Governor of New York. In 1982, he was the Republican candidate for Lieutenant Governor of New York.

A graduate of the University of Cincinnati, Mr. Emery is a colonel in the United States Air Force Reserve, and a licensed real estate and insurance broker.

Created by Congress in 1954, the Seaway Corporation is a self-sustaining entity, charged with the maintenance and operation of what is fondly known as America's fourth seacoast, extending from the Atlantic Ocean to Lake Erie. Mr. Emery's administrative experience and legislative skills will enable him to effectively articulate United States interests in discussions with the Seaway's Canadian counterparts. The setting of tolls in 1984, promoting of trade and priority need for repair and maintenance work at the locks are matters awaiting the prompt attention of a new administrator. Mr. Emery enjoys the support of the Great Lakes task force (an organization of maritime industry and labor representatives), and I respectfully recommend your favorable consideration of Mr. Emery to this important post.

Senator STEVENS. Thank you, very much.
Congressman Kemp.

**STATEMENT OF HON. JACK F. KEMP, U.S. REPRESENTATIVE FROM NEW YORK**

Mr. KEMP. Thank you, Mr. Chairman.

It is a pleasure to join Al D'Amato and other New Yorkers in our delegation in introducing Jim Emery as the President's nominee for Director of the St. Lawrence Seaway Development Corp.

Mr. Chairman, Jim is from Livingston County, New York. I used to represent just the suburbs of Buffalo, but since redistricting in 1980, I have ended up with a district that stretches from the banks of Lake Erie to the banks of Seneca Lake in the beautiful Finger Lakes region of New York. It includes Wyoming, Livingston, and Ontario Counties. Jim is from Livingston County, a part of New York that I think balances beautifully the recognition of the need in this country for the protection of our natural resources while at the same time working for economic development through economic growth, commerce, and industry.

Livingston County has given us not only an outstanding legislator in Jim Emery, Mr. Chairman, but I think it has given us an outstanding nominee for the Director of the St. Lawrence Seaway Development Corporation. I am particularly pleased because Jim is a friend. He has been a comrade in arms in many of the political battles in New York. He lost a very tight race for Lieutenant Governor in the last election, but as we were sitting commiserating with he and his beautiful wife Jill one evening in Livingston County, I told him what my mother had told me a long time ago—no door closes in our life that another door doesn't open. And a door has opened for public service to Jim Emery, Mr. Chairman, that is particularly gratifying not only to his friends, but to all New Yorkers. Our State's loss politically has been a gain for the Northeast and for the country, and I am particularly pleased that President Reagan has nominated him for this important position. As I say, I think he is going to help strike a balance between the need for protecting our natural resources, while at the same time recognizing the need to revitalize the economy of the Northeast, and particularly our transportation and industrial sectors.

So, it is a great honor to be with, Senator D'Amato, and other members. Barber Conable, who represented Livingston County before I did wanted to be here, but could not. I am not only honored to represent that area, but particularly pleased that the President has chosen Jim Emery.

Thank you for your hospitality, and I appreciate the chance to be here.

Senator STEVENS. Thank you for taking the time to come over. I see we are now being joined by Congressman Martin. Please join us.

Thank you, very much.

Mr. KEMP. Thank you, very much, Mr. Chairman.

Senator STEVENS. Good morning. David, do you have a statement you wish to make?

## STATEMENT OF HON. DAVID O'B MARTIN, U.S. REPRESENTATIVE FROM NEW YORK

Mr. MARTIN. I am not Mr. Emery's Member of Congress, but I probably know Mr. Emery as well as anybody here in Washington. I served with him in the New York State Legislature, and I was privileged to work very hard to see that he was elected to be the Republican leader of the New York State Assembly. I have worked with him on many projects and consider him a personal friend. When it came to my attention that Mr. Emery was being considered for the position of St. Lawrence Seaway Administrator, I was anxious to join many of my colleagues in the House in supporting his candidacy. He understands the so-called problems of the Seaway and is fully prepared to promote the Great Lakes-St. Lawrence Seaway System. He is clearly the right man, at the right time for the Seaway Corporation. He can provide the leadership it needs; the word "administrator" fits Jim Emery very well. I am satisfied that everyone with whom he has contact in this new responsibility is going to be duly impressed with his administrative ability and his willingness to listen to those with whom he works.

In short, Mr. Chairman, I recommend him to you very, very highly. And I thank you very much for having me here this morning; it is indeed an honor.

Senator STEVENS. Thank you, very much. We appreciate your coming over here in the morning to be with us. We would be happy to have you stay, if you like.

Mr. Emery, there are a series of questions that have been given to me to ask you to get your views on the record. This goes back a long way with me, because I was involved in lobbying for the St. Lawrence Seaway many years ago. One of my good friends was in charge of that activity. I was not a paid lobbyist, but I was helpful working with those people who were trying to achieve authorization of the St. Lawrence Seaway.

What are your plans to achieve a reduction or a total elimination of the tolls at the two U.S. seaway locks?

## STATEMENT OF JAMES L. EMERY

Mr. EMERY. Mr. Chairman, as much as I personally dislike tolls on the seaway, one of my responsibilities as Administrator will be to operate the Corporation as required by law. Presently the U.S. law requires the assessment of tolls on the vessels and cargos which are calculated to generate sufficient revenues to cover all the costs of operation, maintenance and administration.

I am hopeful that through a very aggressive marketing campaign we can increase seaway activity to the point where reduction in tolls is eventually possible. Moreover, any economies of operation that we can effect without limiting the level of service will be favorably considered, but both seaway agencies must continue to meet the respective statutory mandates of self-sufficiency.

Senator STEVENS. Well, is it possible to eliminate those tolls without an act of Congress? Maybe I should not ask you that question; I should ask the staff.

Mr. EMERY. Not unless you give us another source of revenues. We have to meet our obligations, obviously.

Senator STEVENS. What about the St. Lawrence Seaway Authority of Canada? Are you familiar with their objectives as far as tolls are concerned?

Mr. EMERY. I am, sir, and again, it would make little sense for us to eliminate tolls on the two locks that we operate if Canada is going to continue to assess tolls on their five locks in the Montreal to Lake Ontario section, and indeed, they get 100 percent of the locks in the Welland Canal. So, we should maintain our role in the tollmaking process with them. It is a dual responsibility, and if we were to vacate that and they have full control of the tolls on their sector, I think we would be giving up a great deal.

But I do intend to very actively pursue the marketing aspect, to build up the usage of the seaway to a point where the revenue stream will allow us to look at other avenues, and hopefully maintain or reduce them. I was very pleased that Secretary Dole announced just a few weeks ago, a few days ago, that we are maintaining the tolls as they are through the next navigation season. So that is a step in the right direction, as far as I am concerned.

Senator STEVENS. I am told it has been proposed to extend the navigation season through the seaway through 10 or 11 months of the year. Have you focused on that?

Mr. EMERY. Well, again, to make the system economically viable, every day that we extend it is certainly to the benefit of those people that are using it as well as to the seaway itself. There are, however, concerns of environmental groups, of the power authorities who utilize the same water source that we do, and I certainly want to work to achieve a balance there. But the maintenance aspect, for instance, has to be handled I the months that the seaway is down.

Senator STEVENS. Congressman Conable. Good morning, my friend.

## STATEMENT OF HON. BARBER B. CONABLE, JR., U.S. REPRESENTATIVE FROM NEW YORK

Mr. CONABLE. Good morning, Senator.

I wanted to come over here and just put in a word, if I could. Would you mind?

Senator STEVENS. Congressman Conable, we are always happy to have you.

Mr. CONABLE. Well, thank you, Ted. I appreciate the committee's willingness to consider the confirmation of Jim Emery. Jim's political career and mine have been intertwined in countless ways over the years. For many years he was one of my county leaders. He has been an assemblyman in the area that I represented, rising to the minority leadership of the State assembly. And his name is legend in my part of New York State.

The reason is that he is an extremely adroit, hard working and effective public servant. He has, over the years, developed the reputation for effectiveness, because he works at whatever he is doing 20 hours a day, and has a cutting edge as keen as any decent fellow could possibly have when it comes to accomplishment.

I am particularly proud of his public service record, as a man who shares the area of his birth and his political career.

In a job like the directorship of the the St. Lawrence Seaway, he would be particularly effective. And I know there has been some concern among midwestern Senators that somebody from New York might have divided loyalty about the transportation system of which the St. Lawrence Seaway is such an important bottleneck. I can assure the members of this committee and you, Mr. Chairman, that that is nothing you should be concerned about. Jim Emery has no reason not to give his heart and soul to the job he does, without any predisposition in favor of any port or any transportation system, other than the system of which he will be a very key and significant leader.

In short, I think the President has made a most salubrious choice in Jim Emery. Obviously, I supported his candidacy. I am thrilled that it worked out. I can't think of anybody better for the job. I can't think of anybody who would give himself more fully to the job. It is just not a matter of experience, but a matter of motivation and abilities as well. As you can see, I am extremely enthusiastic about the opportunity this committee has to confirm him, and will stake my life on the performance of his duties in absolutely the best traditions of public service.

Senator STEVENS. That is a high recommendation to this committee, Congressman. We appreciate your taking the time to come over.

I have one last question to ask you, Mr. Emery, and that is, I am told there has been a significant decline in shipping through the St. Lawrence Seaway in recent years, and that some people are worried about the next Administrator making it the first priority to try to restore the economic viability and competitiveness of the seaway as a benefit for the Great Lakes' ports. Will that be your objective?

Mr. EMERY. Yes, sir, it will be. I intend to actively involve myself and all the employees of the seaway in actively marketing and promoting the seaway to make it a very viable seacoast of this United States, and that is our goal and we are going to undertake it very vigorously. We're going to build upon the advantages we offer to those people who are shipping to and from this country, and we intend to very actively pursue that.

Senator STEVENS. Thank you, very much. I want to tell you you come very highly recommended to this committee. We have people come over here once in a while from the House, but I have not seen three Members come over at a time which is so busy. One Congressman would be batting pretty well, but you are batting 1,000 this morning.

Mr. EMERY. Thank you.

Senator STEVENS. And we appreciate the fact that you do come so highly recommended by people who have worked with you in your State. We will certainly pass that on to the other members of the committee.

We would normally submit questions to you for answer, but we are not going to do that. Those people who had questions to ask ought to be here. We intend to try and poll your nomination out along with the other one we have held today, and if that is possible, we don't have time to wait for answers to questions. So I am satisfied with your presentation.

Do you have any statement you would like to make beyond what you have made?

Mr. EMERY. Mr. Chairman, I just appreciate your being here and handling this this morning, and I would like to also thank the staff of the committee, both majority and minority, and the Northeast-Midwest Senate Coalition for the opportunities they gave me to meet with them and the courtesies they extended to me. Thank you.

[The biographical sketch, answers to questions of the committee, and material for the record follow:]

BIOGRAPHICAL SKETCH OF JAMES LOUIS EMERY

Address: 4330 Long Point Road, Geneseo, N.Y. 14454, mailing: P.O. Box 36, Geneseo, N.Y. 14454.

Date and place of birth: 22 July 1931, Lakeville, N.Y.

Marital status: Married to Jill Houghton Emery.

Names and ages of children: James, Jr., 26; Jon, 23.

Education: University of Cincinnati, College of Business Administration, BBA 1953, 1948-53.

Employment record: 1/83 to present—President and founder, The Emery Corporation, 4330 Long Point Road, Geneseo, N.Y.—a political and governmental consulting firm and comprehensive real estate development and mortgage financing firm.

1/65-12/82—Member of Assembly, State of New York, Albany.

6/65-12/82—Insurance and real estate broker, firm of Youngs & Linfoot, Geneseo, N.Y.

4/55-12/64—Deputy Sheriff, Sheriff's Sgt., Chief Deputy Sheriff, Undersheriff, Sheriff, Livingston County, Geneseo, N.Y.

4/53-4/55—United States Air Force, 2d Lt, 1st Lt, Security and law enforcement.

Government experience: Served in United States Air Force as 2d Lt; separated with rank of 1st Lt; 4/53 to 4/55—Security and Law Enforcement.

Continued in Air Force Reserve and retired as Colonel 3/22/83. Most of my reserve time was spent with Air Force Office of Special Investigation. During last two years, I was the Mobilization Augmentee to the Commander, AFOSI, Bolling AFB, D.C.

1955-60—Deputy Sheriff, Sheriff's Sgt., Chief Deputy Sheriff, Undersheriff, Livingston County, N.Y. All appointive positions.

1960—Appointed Sheriff of Livingston County by then Gov. Nelson Rockefeller.

1960 and 1963—Elected Sheriff of Livingston County, N.Y.—resigned 12/31/64 to assume new position.

1964-82—Member, New York State Assembly. Served as Deputy Majority Leader; Assistant Minority Leader and in 1978 was elected Minority Leader.

Memberships: National Honor Society, Livingston County Deputy Sheriffs Assn., New York State Sheriffs Assn., Air Force Association, Reserve Officers Association, National Conference of State Legislators, member and past president, Legislative Pilots Association, member, Harrison Lee Post, American Legion, Lakeville Volunteer Fire Department, Exempt Club, past president, Livonia Rotary Club, past chairman, Lakeville Branch, American Red Cross, past vice president, Genesee Council, Boy Scouts of America, member at large, Geneseo Council, Boy Scouts of America, and member, Lakeville Community Church, past member, Livingston County Chamber of Commerce.

Political affiliations and activities: 1957-60—Chairman, Town of Livonia Republican Committee, 1960-67—Vice Chairman, Livingston County Republican Committee, 1967-72—Chairman, Livingston County Republican Committee, 1978—Chairman, Duryea for Governor Committee. Have worked in and for the Republican Party in every election since 1955. Have contributed to local, state and national party and various candidates.

Honors and awards: Honorary Doctorate of Civil Law, Mercy College, New York—1980; Legion of Merit, USAF, 1983; Meritorious Service Medal, USAF, 1982; Distinguished Military Graduate, 1953; and National Honor Society, 1948.

Published writings: None.

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

*Question 1.* Do you think that competition between the Great Lakes and East Coast ports for overseas exports and imports is a positive or negative factor in terms of an overall national transportation policy?

Answer. Competition is a positive factor in terms of overall national transportation policy. It tends to keep the costs of transportation down while improving the quality of service. Competition encourages technology and innovation and provides the shippers with alternatives.

I would point out that the Great Lakes compete not only with the East Coast ports but with ports on the Gulf and West Coasts of the United States and the East and West Coasts of Canada as well as the overland carriers—barge, truck and rail—which service those coastal areas.

Indeed, one of my first priorities as Seaway Administrator will be to explore with all sectors of the Great Lakes maritime community means by which the Seaway can be made more competitive.

*Question 2.* In the absence of congressional action on ports user fees, would you support elimination of the tolls?

Answer. I would support elimination of the Seaway tolls if provision is made for an adequate substitute revenue source for the Corporation and if the elimination of tolls can be accomplished in a manner that does not jeopardize our longstanding relationship with the Seaway Authority of Canada.

I think it is very important that as long as tolls remain on the Seaway in either country the United States retain a voice in determining the level and nature of those tolls. Even though only two of the Seaway's fifteen locks are in the United States and the Seaway Corporation receives only about 18 percent of the total Seaway tolls, the U.S. and Canadian Seaway agencies negotiate a tariff of tolls which covers both the St. Lawrence River and all-Canadian Welland Canal sections of the Seaway. I don't believe the savings to be realized by eliminating tolls only at the two U.S. locks would justify sacrificing our continued opportunity to influence tolls on the Canadian facilities.

*Question 3.* What are your plans to work with the St. Lawrence Seaway Authority of Canada to reduce or eliminate Seaway tolls?

Answer. I was most pleased to note Secretary Dole's recent announcement that the Seaway entities had agreed that tolls would hold their present levels for the 1984 navigation season. Hopefully, Seaway traffic will respond to this opportunity and reach a volume which will enable us to repeat this action for 1985 and subsequent years.

I also feel that there are opportunities for tariff innovations that should be explored. One possibility which has been brought to my attention is that of offering a volume discount to encourage shippers to commit greater quantities of their cargoes to the Seaway.

*Question 4.* Are you in favor of, or opposed to, an extension of the navigation season through the Seaway, up to a period of 10 or 11 months?

Answer. I am in favor of continuing to explore and study the possibility of an extended navigation season. Every additional day that the Seaway is open is an additional opportunity to generate revenue. I feel we should examine every way possible to get maximum usage from our facilities.

I recognize that there are some very real environmental concerns and I believe these should be fully explored and thoroughly addressed. It will also be necessary to work very closely with the Canadian Seaway Authority if a meaningful extension of the season is to be realized. Canada has recently expressed its concern that the United States not undertake a unilateral effort to extend the season.

I am confident that a compromise which will take into account legitimate environmental concerns, assure Canadian participation and provide the Seaway users with a longer season can be developed.

*Question 5.* Recent years have witnessed a significant decline in shipping traffic through the Seaway. What would be your first priority as Administrator to restore the economic viability and competitiveness of the Seaway and Great Lakes ports?

Answer. I plan to actively pursue efforts to market the Seaway both here in the United States and throughout the world. I intend to personally visit the various port cities on the Great Lakes and meet with port officials to determine how we can best focus positive attention on the Seaway system.

I think the time is ripe for the entire Great Lakes/Seaway maritime community to work closely together and engage in a unified marketing effort. I expect this will involve state and provincial officials as well as Congressional representatives and other government leaders. The 25th Anniversary of the Seaway which will be cele-

brated next year affords an excellent opportunity to galvanize such a unified effort and I expect to take full advantage of it.

Such an effort is also timely now because it will take advantage of the impetus provided by a recovering economy. As the country continues to recover from the recession, the strength of the Great Lakes ports will improve similarly.

*Question 6.* What is the potential for future U.S. coal exports via the Seaway? For grain and other agricultural commodities?

Answer. I think the Seaway has a great future as a conduit for bulk commodities such as coal and grain. Grain has long been the dominant cargo on the Seaway and I expect that will continue to be the case.

Coal emerged as a potential high volume commodity on the Seaway a couple of years ago as the potential for direct transshipment from Seaway vessels to deep-draft ocean going super-colliers in the protected waters of the lower St. Lawrence was perfected. This has slacked off a bit with the general decline of overseas sales of U.S. coal but nevertheless remains a very bright spot in the Seaway's future.

Efforts to market the Seaway should emphasize its capabilities as a bulk system as well as its general cargo potential. Quantity discounts for high volume shippers is a toll innovation which would encourage bulk movements and one which I intend to give full consideration.

*Question 7.* What potential positive or negative impacts would passage of the Competitive Shipping and Shipbuilding Act of 1983 (H.R. 1242 and S. 1624) have on Seaway traffic and Great Lakes ports?

Answer. The purpose of this legislation is to promote increased ocean transportation of bulk commodities in U.S. flag ships. While this is a very worthwhile objective, the bill would, in all likelihood, have a negative impact on the Seaway.

At the present time, there is virtually no use of the Seaway by U.S. flag carriers of bulk commodities. The bulk foreign commerce which the Seaway does enjoy moves on foreign flag carriers. As a result, the bill would result in the diversion of bulk commodities away from the Seaway to U.S. flag carriers serving other port ranges.

I understand the Administration has opposed this legislation, in large part because of the dampening effect which its resulting additional costs would have on U.S. agricultural exports. Because it provides a residual transportation alternative for much of America's agricultural production for export the Seaway would be the first routing to feel this dampening effect.

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STATEMENT OF VERA PAKTOR, EXECUTIVE DIRECTOR, U.S. GREAT LAKES SHIPPING ASSOCIATION

Good morning Mr. Chairman. My name is Vera Paktor. I am testifying on behalf of the United States Great Lakes Shipping Association. Headquartered in Chicago, the Association was founded in 1956 to represent the owners and operators of vessels engaged in the international Great Lakes trades. Today, we represent most of the bulk carriers which link U.S. Great Lakes and foreign ports, as well as a number of lines serving the general cargo trade. I serve as Executive Director of the Association.

Mr. Chairman, the Association appreciates this opportunity to participate in the nomination process. My principals have requested that I appear here this morning to share some of their concerns regarding the St. Lawrence Seaway Development Corporation and its impact on the viability of the commercial shipping lanes known as the Great Lakes/St. Lawrence Seaway System.

As you know, Mr. Chairman, the United States Great Lakes Shipping Association, along with virtually every carrier and port organization on the Lakes, supported former St. Lawrence Seaway Development Corporation Administrator David W. Oberlin for re-appointment when his second term expired in February, 1983. In requesting that he be re-appointed we, along with our colleagues, told the President that Administrator Oberlin had demonstrated satisfactory administrative ability. Certainly, as a former port director at Toledo and Duluth, he understood the nature and unique requirements of the Great Lakes maritime industry. Because of his marketing and operating experiences as a port director, and because of his familiarity with steamship lines as well as the shoreside maritime industry, Mr. Oberlin was able to serve the needs of his constituency while also serving four Administrations.

During Mr. Oberlin's tenure, but certainly not because of it, ocean tonnage carried via the Great Lakes/St. Lawrence Seaway System began what has become a serious decline. World economics lead to decreased imports and exports and the St. Lawrence Seaway Development Corporation, not unlike any other dependent of

cargo movement, began to feel the pinch of our worsening economy. The advent of intermodalism furthered the decline in tonnage transiting the Seaway, limiting further our ability to compete with coastal ports, and making it even tougher to attract ships to the Great Lakes. By the end of the 1970s, operators of vessels engaged in the international Great Lakes trades were facing serious problems—and so was the Corporation, whose revenues were decreasing, but whose financial needs were increasing.

The nominee under consideration today to replace Mr. Oberlin will inherit an agency plagued by insufficient funds and operating problems of a most serious nature. He will have to work with Canadian counterparts, whose interests are not necessarily in the best interest of the users of the U.S. section of the Great Lakes/St. Lawrence Seaway System, to assure that those who serve U.S. Great Lakes ports and shippers are equitably treated. He will have to work with many segments of the maritime industry—whose needs are all immediate and important, but not always harmonious. He will have to serve as the industry's liaison between a multifaceted private sector and the Canadian and U.S. Federal governments.

We believe, Mr. Chairman, that the Administrator of the St. Lawrence Seaway Development Corporation must not only be an able manager, but that he also must have extensive experience in the Great Lakes maritime industry. Even a capable administrator who lacks direct port or steamship experience will require an extensive, multi-year apprenticeship in order to learn the needs and ways of this very complex industry—and the interfacing of the industry and the Agency.

Mr. James Emery, who has been nominated for the post of Administrator of the St. Lawrence Seaway Corporation, is anxious to satisfactorily discharge the duties of the office. Yet, we fear that both his lack of experience in the industry and understanding of our needs may hinder his ability to discharge his duties in the best interest of Great Lakes maritime service providers. We believe that the new Administrator must be committed to elimination of tolls on the Seaway system; that he must be committed to the most vigorous pursuit of significant Seaway season extension; that he must be committed to the elimination of daylight-only navigation as seasonal extremes and that he must be committed to working with the private sector of the maritime industry to assure the achievement of these goals.

We believe, Mr. Chairman, that achieving the goals which I have so very briefly touched upon, must have the strongest immediate commitments possible from Mr. Emery. We cannot be satisfied with any ambiguous assurance that these are matters to be studied and considered. Some of the steamship lines which ply the commercial shipping lanes of the St. Lawrence Seaway System—which pay the tolls, are limited to an 8½ month season and whose operations are otherwise constrained—are on the brink of collapse. Others are surviving from one season to the next, unwilling to make long-term commitments to serve the Great Lakes port range. More than a dozen well known and respected international carriers have left the international Great Lakes services since the late 1970's because of the unprofitability of the service. Certainly, new carriers have not entered the trade—and are unlikely to do so until the problems I have touched on are resolved.

Mr. Chairman, the press has reported that as a New Yorker, Mr. Emery may be subjected to great pressures to serve not a Great Lakes, but a North Atlantic constituency. These reports have caused many among the leadership of the Great Lakes maritime industry serious concern—as what Great Lakes ports want and need—New York opposes. The issues I have enumerated here, critical to increasing the viability of the Great Lakes, are likely to be opposed by New York maritime interests. We therefore request, Mr. Chairman, that you solicit Mr. Emery's views on these matters and that he be requested to speak to these issues during this hearing.

Senator STEVENS. Fine. We appreciate that very much. Is there another witness for this hearing?

I am informed that the witness has not arrived. We will place the statement in the record if that is what the witness wishes to do.

We want to poll these nominations out, so this record will be open for the balance of the day, and after that the record will be closed.

I thank all of you for appearing, and that is the end of this hearing.

[Whereupon, at 10:32 a.m., the hearing was adjourned.]

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